

163
**H.R. 3269 AND DRAFT LEGISLATION ON THE
ADJUDICATION OF VETERANS CLAIMS**

Y 4.V 64/3:103-34

H.R. 3269 and Draft Legislation on...

HEARING
BEFORE THE
SUBCOMMITTEE ON
COMPENSATION, PENSION AND INSURANCE
OF THE
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
FIRST SESSION

NOVEMBER 17, 1993

Printed for the use of the Committee on Veterans' Affairs

Serial No. 103-34



U.S. GOVERNMENT PRINTING OFFICE

77-492 cc

WASHINGTON : 1994

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-046361-0

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H.R. 3269 AND DRAFT LEGISLATION ON THE ADJUDICATION OF VETERANS CLAIMS

WEDNESDAY, NOVEMBER 17, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION, PENSION, AND
INSURANCE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:19 a.m., in room 334, Cannon House Office Building, Hon. Jim Slattery (chairman of the subcommittee) presiding.

Present: Representatives Slattery and Evans.

OPENING STATEMENT OF CHAIRMAN SLATTERY

Mr. SLATTERY. The subcommittee will come to order.

We are meeting this morning to receive testimony on two measures that propose to make improvements in the VA adjudication and appeals process. As you know, this is our fifth hearing on this subject this year, and it should be our last hearing of this session.

I want to thank the gentleman from Illinois, Mr. Evans, for his work on H.R. 3269, and I also want to thank the veterans service organizations for their assistance and recommendations regarding the development of my draft legislation. We have incorporated many of ideas and concepts they suggested earlier this year.

I remain convinced that we can make changes that will improve the system, and we will continue to work toward that end. We will probably conduct one additional hearing to address legislation affecting the BVA board members, but that will be in spring. After that, we will be looking at a markup, hopefully by April.

Today is a special day for all of us because one of our most trusted and fine servants on this committee, Sue Forrest, is going to be retiring here in a few weeks, I am advised.

Sue, you have done super work for us. We have all been inspired by your dedication and professionalism through the years, and we are going to miss you. We wish you well as you head off to a premature retirement. You don't look old enough to be retiring from anything. We are going to miss you, but I understand you are going to be having a lot of fun playing golf and doing other things. Good luck to you, and thanks for many years of service to this country, and thanks for many years of service to this committee also. (Applause.)

Does the gentleman from Illinois wish to be recognized for any kind of an opening statement?

OPENING STATEMENT OF HON. LANE EVANS

Mr. EVANS. First let me join you in the accolades for Sue. She has been a good help to us on our side, and we have had good participation and cooperation from her work on this committee.

We hope you do well in your retirement.

Mr. Chairman, thank you for convening today's hearing on the Department of Veterans Affairs claims adjudication system as well as legislation to reform this system, H.R. 3269. I would like to thank you for including the section of my bill that deals with reconsideration of claims due of obvious error in H.R. 3400 which passed the full committee last week. I hope that we can continue to work together in pushing for adjudication reform.

VA's adjudication system is broken. It fails our Nation's veterans and must be fixed. The men and women who served and fought on our behalf should not be forced to fight VA's bureaucracy as they return to civilian life and seek their deserved veterans benefits.

As we look towards reforming the system, we cannot allow the blame to fall solely on the Court of Veterans Appeals. The Court of Veterans Appeals is not the problem. In fact, I would like to remind everyone that the number and backlog of cases was increasing even before the creation of COVA.

Let me make this perfectly clear. I will strongly oppose any effort to curtail a veteran's right to judicial review. Instead, changes must focus primarily on the way VA regional offices and the Board of Veterans' Appeals process claims. Far too many claims are remanded because they were poorly developed and lack the necessary information. As far as I am concerned, VA's job is to assist veterans rather than to delay their claims until it is too late for anything but survivors' benefits.

I know that the fixing of the system will not be easy. While the changes that will be necessary to reduce the backlog of claims and ensure that a veterans receive fair and timely consideration may appear radical to some, these reforms are long overdue. Some of the changes will undoubtedly result from congressional action and others from the VA's own efforts such as the Blue Ribbon Panel on Adjudication Reform.

While my legislation will not fix the system entirely, it will provide a solid beginning. The legislative measure has received the bipartisan support of committee and noncommittee members. It is based in large part on the consensus recommendations that the veterans service organizations provided to this subcommittee earlier this year. The recommendations that they put forth were comprehensive and thoughtful. I would like to thank the VSO's for their efforts and their commitment to America's veterans.

This bill's major provisions would establish a clear work rate standard for adjudication employees, mandate a detailed annual report on the status of benefit claims, reform certain BVA procedures, and establish a clear CUE standard. Furthermore, both Mr. Bilirakis and I have introduced legislation to raise the pay of BVA members to that of administrative law judges with comparable experience and eliminate the current term limits. As you know, Board members currently receive significantly less than ALJ's and are appointed for fixed terms with the option of reappointment by the chairman of BVA.

Taken together, these two factors have resulted in unacceptable rates of turn over in Board members. Veterans deserve to have their appeals to BVA heard by knowledgeable, experienced Board members, and in order for this to occur, members must be encouraged to stay on the Board.

I want to thank Mr. Bilirakis, and, in your absence last week, Mr. Chairman, he asked if we would be holding hearings on this legislation or similar legislation, and I told him of your intent to do so. So we very much appreciate the timeliness of your hearing. I obviously look forward to working with you on these issues and hope you will hold a markup on these matters and the BVA pay issue early next year.

Thank you for the time.

Mr. SLATTERY. Lane, as we have discussed, it is certainly the chair's intention to have a hearing in the spring and have some kind of a markup hopefully in the April time frame. So I appreciate your work on this. You and I both share the same goal, and that is to correct this horrible backlog problem and do what we can to deal with that.

I think we also both share the view, certainly, that justice delayed is justice denied in many of these cases, and we really do need to do everything we can to put the resources in play that will enable us to correct this problem, and that is my intention, and hopefully this hearing and our future activity will move us in that direction. So thank you for your help.

Mr. SLATTERY. Our first witnesses today are Mr. Charles Cragin, Chairman of the BVA, and Mr. John Vogel, the Deputy Under Secretary for Benefits. They are accompanied today by Mr. Gary Hickman and Mr. Jack Thompson.

Gentlemen, I welcome you, and we look forward to your testimony.

STATEMENTS OF CHARLES CRAGIN, CHAIRMAN, BOARD OF VETERANS' APPEALS; AND R. JOHN VOGEL, DEPUTY UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY J. GARY HICKMAN, DIRECTOR, COMPENSATION AND PENSION SERVICE; AND JOHN THOMPSON, ASSISTANT GENERAL COUNSEL

STATEMENT OF CHARLES CRAGIN

Mr. CRAGIN. Good morning Mr. Chairman, Congressman Evans. It is a pleasure to be with you and the subcommittee this morning to offer the Administration's views on the two important bills before the subcommittee today, H.R. 3269 introduced by Congressman Evans, and your draft bill, the Veterans' Adjudication Improvements Act of 1993. We have provided the Department's comments in our prepared statement.

Mr. Chairman, I can't resist observing that tomorrow, November 18, 1993, is the fifth anniversary of the operative effective date of the Veterans' Judicial Review Act, the so-called NOD date, November 18, 1988. This morning, Mr. Chairman, I would like to thank you and the rest of the committee for your prompt action on subtitle (d) of title 12 of H.R. 3400, the Government Reform and Savings Act of 1993. The four provisions in that bill relating to the

Board, particularly the provision allowing decisions by single members, will assist us in meeting our statutory mission of handling appeals in a timely manner.

We share the concerns of this committee with regard to the need for some kind of relief from the excessive average response times required in connection with an appeal to the Board of Veterans' Appeals.

As recently as fiscal year 1991, it took the Board, on the average, less than 5 months, 139 days, to reach a final decision on an appeal. That does not include time spent at the regional office. That is just the time beginning when the case reaches the Board and ending when the Board sends the file back to the regional office.

As of October 31 of this year, that time, the BVA average response time, had increased to 505 days. That is nearly a year and a half. And that time grow grows day by day. By this time next year, Mr. Chairman, we are projecting an average response time at the Board of 725 days, more than 2 years, and bear in mind that I am speaking only of the time that a case is at the Board. You are absolutely correct when you said this morning that justice delayed is justice denied, and this is justice denied.

When this Committee sent to the President the landmark Veterans' Judicial Review Act in 1988, it marked a great day for the procedural and substantive rights of veterans and their families, and I know that the last thing any Member wanted was to increase the time a claimant had to wait for a final decision. Unfortunately, that is what has happened.

The persons the Board deals with, Mr. Chairman, are among the most important in our society, those who have been willing to put themselves in harm's way for their country. I am committed, and Secretary Brown is committed, to providing quality decisions in a reasonable time to this special class of citizens and to their families, and we look forward to working with you and the other members of your Committee in reaching that goal.

Mr. Vogel has an introductory statement, and then both of us would be happy to respond to your questions, Mr. Chairman.

Mr. SLATTERY. Mr. Vogel?

STATEMENT OF R. JOHN VOGEL

Mr. VOGEL. Good morning, Mr. Chairman, Mr. Evans. I am pleased to be here today to present the views of the Department of Veterans Affairs on those provisions of H.R. 3269 and your own draft legislation which affect the Veterans Benefits Administration.

VA opposes enactment of H.R. 3269. In addition to other provisions, it provides that VA claims examiners not receive credit for work on a claim until the claimant has exhausted or failed to timely exercise the right to appellate review by the Board of Veterans' Appeals. Whereas H.R. 3269 would implement no change in the adjudication process itself, VA has begun a number of initiatives to enable claims adjudicators to make better decisions faster.

Paramount among these initiatives, the Blue Ribbon Panel on Claims Processing is formulating an action plan to meet the objectives of reducing both the time it takes adjudicators to decide benefit claims and the backlog of claims.

The panel offered 42 specific recommendations to accomplish improvements and proposed establishing a working group of VA, veterans service organizations, and outside legal representatives to review current adjudication regulations and procedures and make them more efficient and more easily understood.

VA generally supports the Veterans' Adjudication Improvement Act of 1993. The bill would give VA discretion in requiring pension applicants or recipients to file an annual report of income and corpus of estate. Under current law, VA must require the filing of such reports.

Many of our beneficiaries have either no income or only Social Security benefits, and for several years VA has been able to verify Social Security income by computer matching. We also have the ability, at least on a time limited basis, to have Internal Revenue Service data reported as well.

In general, we support the grant of discretionary authority. If given the authority, we would develop criteria for exemptions consistent with maintaining program integrity, and we would implement our policy through notice and comment rule making.

Mr. Chairman, that concludes my summary statement. We have submitted for the record a full statement of the Department's positions on both bills, and I would be happy now to answer questions that you or members of the subcommittee might have.

[The prepared statement of Mr. Cragin appears at p. 51.]

Mr. SLATTERY. Thank you Mr. Vogel.

I have several questions that probably should be directed to you, Mr. Vogel, and, Mr. Cragin, you are certainly welcome to comment on them too, and as soon as they are completed, I will recognize the gentleman from Illinois.

You have indicated strong opposition to section 2 of H.R. 3269, claiming that it will not have the effect of improving claims development and decision making and thereby reduce remands from the BVA. But isn't it true that there is a problem with regional offices prematurely taking work credit in order to seem to be more productive than they really are, and how can we deal with that?

Mr. VOGEL. Mr. Chairman, that problem was found more in the past than it is today. We set up a work measurement system weighted on the basis of how much time various types of claims take in order to determine and identify our personnel needs in the Federal budgeting process.

The end product system, in distinguishing the various categories of cases, provides in part an automated diary system to assure us that a decision is, in fact made on each claim filed.

In times past, when we began to fall behind in work, the objective was—and I think our objectives have changed for the positive—to try to move work through the process rather than adjudicate claims.

That sounds a little self-contradictory perhaps, but the objective of reducing our numbers sometimes drives people to take credit for work rather than take action on claims. We think that is a thing of the past. Certainly, the IG hasn't found it in looking at our adjudication operations.

I think probably in the heyday of administering the Chapter 34 program, when large numbers of claims were filed, we fell into a

trap of being concerned with large amounts of work and then focusing on taking credit for it. I think it is a thing of the past, Mr. Chairman.

Mr. SLATTERY. Is this something that your Blue Ribbon Panel has looked at?

Mr. VOGEL. The Blue Ribbon Panel made no comment on end products in general. Their concerns were the identification of initiatives for streamlining and the adjudication process making it more efficient and better focused.

Mr. SLATTERY. Shouldn't they be looking at the end outcome there?

Mr. VOGEL. The panel focused on the the large issue of processing the individual veteran's claim rather than on a work measurement system, which is in place simply to help managers monitor the work being done.

Mr. SLATTERY. You also strongly oppose Section 3 which would implement a reporting requirement, and you stated that this report would be of dubious utility and would not remedy the long waits now experienced by veterans for decisions that would require another burdensome report. In as much as Congress has a legitimate duty to provide oversight, why have you objected so strongly to this Section 3? Is it the paperwork burden that you are concerned about?

Mr. VOGEL. We would experience unwarranted increases in both personnel costs and computer costs in generating such a report. We also are concerned that it might divert people from more productive work.

I would be very pleased to share with the subcommittee the work measurement reports that we now have available. I think that they would satisfy the oversight needs of this subcommittee.

God knows, we already have too many reports, Mr. Chairman.

One of the things that Mr. Gober has done as the Deputy Secretary is in fact reduce the number of reports. He has made that one of his management objectives, so that we can concentrate on caring for patients in the hospitals and adjudicate their claims in the regional offices rather than spend so much time on reports.

Mr. SLATTERY. Mr. Vogel, you also raised concerns about program integrity with regard to two provisions in the draft bill, particularly regarding the evidence requirements and private physician examination reports and indicated you would like to review these further. How much time do you need for this? I would like to have some further input from you before the next session begins. Is that possible?

Mr. VOGEL. Yes, it is, Mr. Chairman.

What is the time line there?

Mr. HICKMAN. I think, Mr. Chairman, we can probably provide something around the first of the year.

We have been looking at a couple of issues, one dealing with single signature ratings and one dealing with private physician reports in rating some compensation claims. We have been monitoring some test initiatives at regional offices and we will be taking a look at the results shortly. We have gathered some data already, but we haven't formulated our conclusions at this time.

Mr. SLATTERY. Okay. One last question before I recognize the gentleman from Illinois. I am just interested in the Blue Ribbon Panel's recommendation, and I am just curious, do you plan to share their recommendations with this committee? And, if so, when, and did the panel recommend any legislative changes?

Mr. VOGEL. Mr. Chairman, we would be delighted to share it with you.

The draft report has been sent to all members of the Blue Ribbon Panel for any changes, editorial or otherwise, that they might wish to make. I have briefed the Secretary on the general thrust of the report. The staff of the full committee were briefed last week in a summary fashion, and I should have a final, full report available soon.

I can't let this opportunity pass without commending the work that the veterans service organizations did on that panel. We also had the involvement of the Office of the General Counsel and the Board of Veterans' Appeals. The panel accomplished a lot of hard work and I think their product is very good. I would be very pleased to share it with you in detail as soon as the Secretary has received a full briefing.

The Panel recommended no legislation but did recommend regulatory changes which we will consider.

Mr. SLATTERY. Okay.

The gentleman from Illinois.

Mr. EVANS. Thank you, Mr. Chairman.

John, thank you for testifying today.

I am disappointed, I guess, that in opposing the section that deals with work credits that you never really address the issue of whether such reform would improve the development of claims by regional offices and benefit veterans. Opposition seems to be based on the fact that the new work credits would, in your opinion, make it more difficult to justify the annual budget request.

We all agree that regional offices must improve claims development, I think, and we also agree that automation is not the whole answer. In fact, a problem with automation is that it is only as good, obviously, as the data that goes into the system, and as the IG recently found with the Pittsburgh regional office, the data is often very faulty. So I think that adjudication officers are going to have to do a better job.

What evidence do you have that could show that changing the way work credits are issued would not motivate adjudication officers to more fully develop claims when they are first received?

Mr. VOGEL. The Blue Ribbon Panel on Claims Processing spent a great deal of time on claims development, and the recommendations made for improving the quality of claims development will have a positive effect on the system.

Of the 42 recommendations, I think eight of them dealt with claims development specifically. The work measurement system itself was not an issue addressed by the Panel.

The IG report on Pittsburgh dealt with erroneous data entered into the work monitoring system. We have worked into our national analyses of regional office operations an appraisal of those problems identified by the IG, and we will continue to appraise them nationwide as we analyze adjudication operations.

Mr. EVANS. You stated that compliance with record-keeping requirements of Section 3 of the bill would require BVA to modify its case tracking system. You and some other VA staff have told me in the past the data could easily be obtained from the target ATS or BVA systems. Can you tell us exactly what data would not be readily obtained and fully justify your cost estimate?

Mr. CRAGIN. I can respond to that portion of it that relates to the Board of Veterans' Appeals, Congressman Evans.

As you are aware, the existing law requires that I provide an annual report to Congress as part of the Secretary's submission in the budget, and that specific statutory requirement lays out a number of categories of information that is required. Not among these is tracking cases that had a hearing in the field that ultimately resulted in a personal hearing before a member of the Board, tracking cases that did have a hearing in the field that ultimately resulted in a hearing before a member of the Board, and things of that nature. We would have to change the way we accumulate that information. It is not currently part of our database, and that was why we provided the fiscal note in our prepared testimony.

Mr. EVANS. All right.

John?

Mr. VOGEL. Mr. Evans, one of the pressing needs that we have identified is acceleration of the ADP initiatives we have in place. At this time we are enhancing our computer capabilities in all regional offices and by the end of this fiscal year the enhancements will be in place. Among our initiatives is one with the acronym C-O-V-E-R-S, or COVERS, for Control Of Veterans Records. It is a bar coding system which will be installed after the ADP enhancements are put in place.

After we put the bar coding system in place, we will be able to track records throughout the entire adjudication process with automation. We would no longer have to use a manual tracking system.

Also the claims processing system will provide automated assistance in claims development and tracking. I think when that is in place we will have the ability to produce the data you are asking for now.

I would be pleased to share with you the types of reports that we now receive, providing information important to officials who are responsible for claims adjudication. The reports are rather extensive and provide useful data. I would be pleased to share them with you so that you might see what we have now. I think there may be a belief that we don't obtain much information; in fact, we do.

Mr. EVANS. Mr. Chairman, I see my time is running out. I would like to submit some written questions concerning each level of the report that I would request in my bill and have the VA respond as to how hard it would be to have the computers' software adjusted for that and some additional questions.

Mr. SLATTERY. Without objection.

Mr. EVANS. I appreciate it.

[The questions and answers appear at p. 123.]

Mr. SLATTERY. Does the minority have any questions they would like to ask at this time?

Ms. FORREST. Yes, thank you, Mr. Chairman.

Mr. Vogel, with respect to the master veteran record, which you may recall was an item on the Vice President's agenda for reinventing government, what is VA doing administratively to implement this program, and what is your timetable for implementing the master veteran record?

Mr. VOGEL. I am going to ask Mr. Hickman to respond.

Mr. HICKMAN. Let me try, Ms. Forrest, to shed some light on that subject.

VBA is starting in 1994 a very detailed development of specifications for a modernized system. We will need at least a year to develop all the specifications. Our activities will be stepping stones toward a common data base for all of VA, involving not only VBA, but also VHA and other elements within VA. We will all be interconnected in such a way that we will gather information once from an individual and not need to duplicate that effort throughout the Department.

In essence, we are combining our resources into a common data base from which information on a veteran can be used throughout our system without having to burden the veteran with repeated requests for additional information.

The time frame for completing this initiative, at least from the VBA standpoint, is 3 years to 4 years.

There are stepping stones along the way, however for example, this year we are installing Stage One modernization equipment. There will be some applications flowing from that in 1994, and subsequently there will be yet other additions. By 1997/98, everything will be in place based in so far as VBA is concerned.

Ms. FORREST. In addition, the Blue Ribbon Panel, the outline that we have—we don't have the report, obviously—did not even mention this. Was it part of the conversation?

Mr. HICKMAN. Certainly, the Blue Ribbon Panel took into consideration forthcoming modernization initiatives. For example, we earlier mentioned automated assistance in claims development, which is in essence an application to assist in developing a claim. It will incorporate a rule-based system which guides claims examiners through an application for benefits in order to obtain the right information from all the sources, and provide the veteran a request for evidence and information needed by VA.

Ms. FORREST. Okay. In follow-up to this, do you believe that VA possesses, either within VBA or the VA itself, the technical and management capability to do the systems engineering and integration necessary to pull VA's information systems together?

When and how will that function be performed?

Are outside private sector alternatives being considered such as the DOD has?

Mr. VOGEL. Ms. Forrest, the Secretary has identified this as an extremely important initiative and has a group working on it.

I think within the VA there is the technical expertise to improve the automation systems generally and to create a single master veteran's record. There are no indications at all—and we have had outside people look at it—that the data is not there, or that it cannot consolidate into a single record.

I can truly sense what we put veterans through sometimes, from my recent experience as a medical center director and my previous

experience in benefits. They come to the VA medical center, (some already beneficiaries of monetary benefits from VA) and the same information we already have in our possession at the regional offices is asked of them again to determine their eligibility under the convoluted rules we have in place in the hospital system. It is a shame. We ought to be able to draw information from a single source and take the burden off our claimants.

One of the things that the Blue Ribbon Panel emphasized, in fact, was that we should be user friendly. Redesign the application forms, redesign the notification systems, utilize telephone and other personal contacts with beneficiaries, and, above all, keep our focus on who is important in the process, the veteran and his family, not the bureaucrats.

Ms. FORREST. Another question, John. Is the Secretary going to designate someone to oversee the whole thing?—I mean like Deputy Secretary Gober or someone like that—because you are dealing with the VBA, you are dealing with VHA.

Mr. VOGEL. The Assistant Secretary for Finance and Information Resources Management, Mr. Catlett, has responsibility for that, and both the Secretary and the Deputy are going to push it. I know that Mr. Gober will monitor it closely and will see to it that we are successful.

Ms. FORREST. Okay. Thank you very much.

Mr. Chairman, I have some questions for the record.

Mr. SLATTERY. Without objection, we will have them included in the record and get answers for them.

Ms. FORREST. Thank you.

[The questions and answers appear at p. 123.]

Mr. SLATTERY. Any further questions of this panel?

If not, thank you very much for being here today. We appreciate your input, and we will be in touch with you as we move forward with this.

Mr. VOGEL. Thank you, Mr. Chairman.

Mr. SLATTERY. Thank you all.

Mr. SLATTERY. The next panel is Mr. Paul Egan, executive director of the Vietnam Veterans of America; Mr. Russell Mank, national legislative director of the Paralyzed Veterans of America; and Mr. Larry Rhea, deputy director of legislative affairs for the Noncommissioned Officers Association.

Welcome, and we will look forward to your testimony and urge you to summarize your written statements that we have for the record; and, Mr. Egan, we will recognize you first and move from my right to my left.

STATEMENTS OF PAUL S. EGAN, EXECUTIVE DIRECTOR, VIETNAM VETERANS OF AMERICA; RUSSELL W. MANK, NATIONAL LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA; AND LARRY D. RHEA, DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS, NONCOMMISSIONED OFFICERS ASSOCIATION

STATEMENT OF PAUL S. EGAN

Mr. EGAN. Thank you very much, Mr. Chairman.

I would like to spend some time discussing this entire matter of work measurement. It is an issue that we have testified quite

strongly about in the past, and it is an issue that we continue to feel is critically important if we are to get regional offices away from their current practices of churning claims rather than fully developing them and deciding them.

Notwithstanding and with due respect for the comments made by the previous panel, there is an IG report that we cite in our testimony beginning on page 4, and I would just quote from that IG report. It was an IG report of the regional office in Pittsburgh. Granted, the Pittsburgh regional office is not one of the more efficient offices within the entire regional office system. But this, I think, is extremely significant, and I would like to just quote this. These are the conclusions. "Regional office internal controls were not adequate to minimize claims processing delays. Adjudication Division personnel did not process benefits claims in a timely manner, and many of the delays could have been avoided or reduced. Responsible personnel did not promptly request necessary evidence, did not follow up when evidence was not received timely, and did not adequately monitor pending claims. As a result of claims processing delays, claimants may have experienced financial hardship. Adjudications Division personnel often recorded inaccurate data in the work-in-progress subsystem, pending claims were recorded as completed, claims were recorded as new issues when no new issues were involved, and types of claims were incorrectly recorded. In addition, dates of disposition were inaccurately recorded. These errors adversely affected management's ability to monitor claims processing."

Now even if Pittsburgh is the worst of all of the regional offices, you have to believe that this is going on in many of them, if not most of them, perhaps even all of them to a greater or lesser extent.

Underlining the fact that this is an IG report, this is not something that the Comp and Pen Division has come forward with. You can look at this in either of two different ways.

First of all, if the Comp and Pen Division is aware of this but is doing nothing about it, that is certainly a shameful circumstance. On the other hand, it may very well be that the Comp and Pen Division—which we believe is the fact—simply does not have a method of validating the information it is receiving from the field. Now if that is the case, every time Mr. Vogel or someone else comes up here and testifies about what a great job the regional offices are doing, he is essentially hanging himself out to dry every time an IG report comes out like this.

Claims churning is going on, there is no doubt about it, and it is having a salutary effect on the backlog because the level of remands from the Board of Veterans' Appeals is testimony, strong testimony, to the fact that full claims development is not being accomplished at the outset, and that is why the provision in H.R. 3269 is so important, and frankly I can't quite understand why the VA wouldn't embrace this as a method of helping it validate the information that it is getting from the field and as a way of helping it to better manage and control the operations in the regional offices.

The subcommittee bill contains a variety of provisions, all of which we are in agreement with. In some cases, we have some rec-

ommended modifications; those are fairly minor. For example, the section that we are very grateful to see which permits the VA to accept non-VA physician examinations for ratings purposes, that certainly is needed, that certainly can contribute to eliminating some of the delays.

But certainly it would be well to put something in, perhaps in the report language, that would encourage VA pretty strongly to make available to physicians the information they need as to the content of exams that can be used appropriately by the VA so that these examinations are as developed as they need to be for VA to render adjudications decisions.

There are a variety of provisions in this legislation. One additional provision needs some modification, and that is the report to require VA to report on the feasibility of reorganizing adjudications functions throughout the regional office system.

We don't have any particular objection to that, but the definition of "reorganization" is absent in the language of the bill. Something to determine the scope of reorganization is needed, and the reason for making that suggestion is the recent history in one example of a reorganization that took place in New England—I think I raised this issue at a previous hearing—in which loan guarantee functions throughout New England were consolidated, and the rationale was that there was very little demand on those different offices at that time.

Since that time, however, property values and the economy have declined, and accompanying that change is an increase in the number of defaults, increase in the number of foreclosures, and in essence what looked like a pretty good idea at the time that reorganization was consummated has turned out to be not such a good idea, at least given current circumstances.

Seeing that my time has expired, Mr. Chairman, I would simply underline the critical importance of this work measurement provision in Mr. Evans' bill.

[The prepared statement of Mr. Egan appears at p. 64.]

Mr. SLATTERY. Thank you, Mr. Egan.

Mr. Rhea.

STATEMENT OF LARRY D. RHEA

Mr. RHEA. Thank you, Mr. Chairman, and good morning. It is once again a pleasure for the Non Commissioned Officers Association to appear and to testify regarding the veterans legislation under consideration this morning.

Much has been said and written, and usually not too favorably, about the problems and delays in VA claims adjudication, but under your leadership, Mr. Chairman, it is obvious that this subcommittee has dedicated itself to finding solutions to those problems. For that, the Noncommissioned Officers Association and all veterans are very grateful. Your diligence and abiding concern for solutions and improving the appeals and adjudication process is commendable, and we thank you for that.

Mr. SLATTERY. Thank you.

Mr. RHEA. Overall, NCOA is pleased with the effort that is being undertaken here this morning. The Association only has major concerns with principally two or three areas. Therefore, I will confine

my opening comments to those concerns, although the Association has commented in detail in our prepared statement on both pieces of legislation.

Section 2 of H.R. 3269, as we are learning here, proposes to change the method for work credit and give credit only when a decision on a claim becomes final. On the surface, it appears to have merit, but frankly NCOA believes it is a little bit of an overkill or an overreaction. We have suggested in our statement that maybe a more reasonable approach would be to grant credit on an original claim when the rating or denial decision has been rendered. If the veteran files a notice of disagreement, another complete review is required, and NCOA believes a case credit should be given in these instances. The Association believes this to be a fair and reasonable proposal and would fairly provide work credit for work done.

We also have very carefully analyzed the rather detailed report proposed in Section 3 of H.R. 3269, and frankly we could not make any connection between that report and the overall goal of improving the adjudication process and the final product.

NCOA suggests that the information to be gathered by that report is currently available in other reports, and unless the Secretary of Veterans Affairs favors the proposed report for reasons not readily apparent to us, NCOA would recommend that that particular section be deleted from the bill. We just heard from the VA a few moments ago that VA is in opposition to Section 3.

But the bottom line, I believe, regarding that report is the needs of the subcommittee in exercising its oversight responsibilities.

Our major concern, though, and disagreement is contained in the proposal to allow determination on original and reopened claims to be made by a single rating official. It appears that much of what is being attempted to be improved upon today stems from the decisions of RO rating officials, and we are gravely concerned that permitting a single rating official would exacerbate the very problems that the subcommittee is attempting to fix.

Therefore, we would urge the subcommittee to very carefully consider the potential additional consequences of going to a single rating official system. NCOA would certainly like to review the results of the training efforts that the VA says they are doing and also review the results of the locations where a single rating official system is being employed before endorsing this particular section.

In regard to Chairman Slattery's draft legislation, sir, NCOA agrees with that initiative completely. However, in the section regarding the transfer of military medical records from the Department of Defense to the Department of Veterans Affairs, we would suggest that section be more strongly reinforced by directing it to make it happen because many of the problems that cause delays stem from the lack of medical records being available.

In conclusion, and, again, generally speaking, we view both bills as positive initiatives to improve claims adjudication procedures. Certainly, in those few instances where we have stated disagreement or concern regarding the proposed course of action, I hope you understand that such comments are intended to be constructive to the mutual goal that we are all striving to achieve.

Your consideration of our comments and our prepared testimony is very much appreciated. Thank you.

[The prepared statement of Mr. Rhea appears at p. 68.]

Mr. SLATTERY. Larry, thank you very much, and we appreciate your input today.

Mr. Mank.

STATEMENT OF RUSSELL W. MANK

Mr. MANK. Mr. Chairman, Congressman Evans, PVA appreciates this opportunity to comment on H.R. 3269 and the second draft bill. I would like to highlight a few of the comments we made in our written statement.

In May of 1993, PVA and other veterans service organizations submitted a joint letter to the members of this committee recommending a series of improvements. PVA, on May 24, in a separate letter, submitted a lengthy list of recommendations to this committee; many of those suggestions are incorporated in H.R. 3269. We wish to express our appreciation for the committee's responsiveness in addressing these recommendations.

In the May 1993 letter, PVA and the other service organizations asked the VA to change its work management standards. PVA said that VA must revise regional office and BVA work measurement standards to give credit only for final decisions. PVA's support for this recommendation was based on the belief that this would serve as a means to reward and reinforce complete correct claims adjudication. A claim processed correctly the first time takes far less time to adjudicate than a claim subject to remands from the Board and the Court of Veterans Appeals to correct deficiencies.

The adoption of improved work rate standards need not be made by legislation, as in section 2 of H.R. 3269. PVA believes that these standards should remain an internal management tool to determine productivity.

Section 3 would provide for an annual report on the status of claims for benefits. It is the impression of PVA that this information is already available to the committee.

Section 4 would permit the use of single member rating determinations of VA benefits. PVA in the past opposed the idea of a single member rating board. Our opposition continues. Losses in quality brought about by the proposed change could occur. We do not believe that any significant increase in efficiency will occur.

The change to a one-member board would bring about a fundamental change in the entire nature of the VA's initial decision-making process. Most VA claims involve questions of a medical nature. Claimants would lose the opportunity to have their cases reviewed by a physician. The veteran would thus lose the medical expertise desirable in resolving the claim. Also, the physician would not be available to make observations at the hearings. Also, PVA does not believe that the change to one-member rating decisions will increase significantly the efficiency of the VA.

It is our understanding that the use of single raters is being tested currently in two areas. We would like to have this study completed over the next 6 months prior to the VA initiating any board charges.

Section 5 of the bill would permit the Board of Veterans' Appeals decisions to be made by one individual. PVA has no objection to the use of one-member decisions when the Board's decision is either to

remand the case to the agency of original jurisdiction for further adjudication or one in which the benefits are fully allowed. However, PVA continues to support retention of three-member panels at the BVA in cases which are denied.

From section 5, PVA remains adamantly opposed to granting the chairman of the Board of Veterans' Appeals membership on the Board.

Finally, Mr. Chairman, the second draft bill to improve the VA adjudication process appears to draw heavily from the VA Blue Ribbon Commission's draft report. Each one of the bill's provisions could be accomplished, we believe, without legislative intervention. We believe that the same is true of sections 2, 3, and 4 of H.R. 3269. PVA supports the administrative initiatives contained in the bill. Mr. Chairman, this is the Congress of the United States; it would seem to us that you ought to be able to obtain the reports you need from the Executive Branch. If, however, you are unable, then June 30, 1994 would be an appropriate date to reintroduce this piece of legislation. Congress could pass it during the second session.

Mr. Chairman, I appreciate the opportunity to present PVA's perspective on these bills; that concludes my testimony.

[The prepared statement of Mr. Mank appears at p. 75.]

Mr. SLATTERY. Gentlemen, thank you very much, and I want to publicly recognize all of you and the other representatives of the service organizations that will also testify here today. I appreciate the time that you have given to this and the time that you have spent working with my team and in our conversations to try and respond to this really highly technical area, and there is a fine line, I guess, between us Members of Congress trying to micromanage the internal operation of the VA and also establishing the kind of legislative parameters that we have to work in, and I don't want to get into the business of micromanaging the internal operation of this, but, by the same token, I want to make sure that we do have the kind of directive and legislative parameters for the VA to operate within. You all have been extremely helpful to me personally and to this subcommittee, and I appreciate it very much.

I don't have any questions for you today, but I am sure we will probably have some questions as we move forward. I hope you heard the testimony of Mr. Vogel and Mr. Cragin, and I don't think there is going to be any question about the fact that we will have access to the recommendations of the Blue Ribbon Panel and recommendations of other studies that they may have internally.

We are going to have good open communication and sharing of information. We are all, I think, committed to trying to achieve the same objective, and that is to process these claims as quickly as we can, and I think that the VA is going to be as helpful as they possibly can on this. So I personally am not worried about having access to information that they have that we need to make policy decisions here at this level.

So, again, I appreciate your testimony today and appreciate the cooperation that we have received from you all to date, and I am sure that we will have a lot more work to do in the months ahead.

Let me recognize at this time then the gentleman from Illinois, and then I'll recognize the minority.

Mr. EVANS. Thank you, Mr. Chairman.

VA's statement clearly opposes the section of my bill that deals with the Department's CUE standards. Your statements, however, strongly indicate your support for this language. Can you elaborate why this is necessary?

Mr. EGAN. Are you talking about section 2 of your bill?

Mr. EVANS. The clear and unmistakable error section.

Mr. EGAN. Oh, from our perspective, it is important, because if you codify a practice that gives the benefit of the doubt to the veteran or if you codify a practice that prevents sidestepping practices of due process that are currently available, it leaves less to chance in terms of removing those. In fact, we have seen some language to do just that in legislation proposed by the administration.

Mr. EVANS. Okay.

Mr. RHEA. I assume you are talking regarding section 6 on decisions based on clear and unmistakable error. On the face of it alone, sir, we support it. We are particularly appreciative of the language in that section that authorizes the awards retroactively to the date of the prior erroneous decision, and, in the view of the Noncommissioned Officers Association, that is clearly the right thing to do.

Mr. EVANS. Okay.

Russell?

Mr. MANK. I agree.

Mr. EVANS. All right.

Russell, I hope I am not mischaracterizing your testimony, but I take it that many of the changes that we seek in the legislation you feel could be done administratively.

However, given the history and the fact that many of the people charged with reform of this system are some of the same people who created it, do you believe that the VA will have the will and the ability to actually make these necessary changes?

Mr. MANK. I would hope so. We understand what you have just said and suggested. Optimistically, this Blue Ribbon Panel will take to heart, or the VA will take to heart, what this Blue Ribbon Panel is going to recommend and actually do what they suggest.

You have the capacity to demand these reports. But if you put into law all of the things that you have written in these two bills and you find that some of the things are not working, then you will have to undo what you have done. It would seem to me that you can obtain these reports within the next 6 months.

Mr. EVANS. All right.

Thank you, Mr. Chairman. I have some additional questions for this panel in writing.

Mr. SLATTERY. Without objection.

Sue.

Ms. FORREST. Thank you, Mr. Chairman. I just have one question to Mr. Egan of VVA.

It is our understanding that your organization did not participate in the Secretary's Blue Ribbon Panel. Can you explain that?

Mr. EGAN. I sure can. We were invited to participate in that panel, and we didn't for two reasons. The first reason is that we had proposed to this subcommittee that the most appropriate way to get to the bottom of what needs to be done from a management

perspective with the administration of the regional offices and the management of the regional offices was to contract for an outside management consulting firm.

We stated very specifically in our testimony on more than one occasion that, in our view, the result of a blue ribbon panel engineered and basically staffed by the VA wouldn't carry as much credibility as an independent management review would have.

Having said that, there was a practical reason for not participating. We certainly would had we had the staff resources to put into it. I haven't had a chance to review the recommendations of the blue ribbon task force, but the briefing we received last week over at the VA, on its content sounds very promising, but reserving final judgment on a opportunity to carefully look at the recommendations contained in that report.

Ms. FORREST. Thank you.

Thank you, Mr. Chairman.

Mr. SLATTERY. I appreciate your testimony today, and I appreciate your time. Thank you very much, and I have no further questions for any members of this panel. So thank you again, and we look forward to continuing to work with you as we pound out a solution to this problem.

Mr. SLATTERY. On the next panel we have Mr. Bob Manhan, the assistant director of the National Legislative Service, Veterans of Foreign Wars; and Mr. Earnest Howell, the national legislative assistant for AMVETS; and Mr. Charles Stenger, Ph.D., national consultant, American Ex-Prisoners of War.

Gentlemen, welcome, and again I will receive your testimony from my right to my left starting with Mr. Manhan.

STATEMENTS OF BOB MANHAN, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS; EARNEST E. HOWELL, NATIONAL LEGISLATIVE ASSISTANT, AMVETS; AND CHARLES A. STENGER Ph.D., NATIONAL CONSULTANT, AMERICAN EX-PRISONERS OF WAR

STATEMENT OF BOB MANHAN

Mr. MANHAN. Thank you, Mr. Chairman. It is my pleasure to be here this morning.

The VFW believes both efforts, Mr. Evans' H.R. 3269, and your own discussion draft bill, have many good points to help the Veterans' Administration improve both the quality and timeliness of processing veteran claims.

We noted that Senator Wellstone from Minnesota submitted a companion bill in the Senate to H.R. 3269. It is S. 1649. Having said that, I will focus on the VFW's three major areas of concern regarding H.R. 3269.

Section 2, the work rate standards at the regional office. We would prefer to have those adjudication staff personnel be given credit once a decision has been rendered at the respective regional office. We think to carry it on through the appellate process would be a nightmare for accountability, and we don't know what advantage that would be for either the VA or the veteran.

Section 3, the annual report on the status of claims—we have heard other people talk about it this morning. It seems extremely

detailed from a VFW point of view. We, the VFW, have received a lot of good information from the Board of Veterans' Appeals' annual report. It is a relatively new requirement, and we have been able to identify trends and major problem areas from this report. Therefore, we respectfully suggest that perhaps this type of format be applied to each one of the 58 regional offices with a cover sheet done by Central Office to give averages for the year from each of the regional offices, and a VA evaluation summary of trends and problems they have identified. However, the VFW is not trying to second guess the needs of the staffers on your subcommittee or desires of the Veterans' Affairs Committee for more detailed information as outlined in Section 2. We notice that this requirement is about 31 percent of the entire bill.

Section 4, the officials determining the original reopened claims—that is, using a one-person decision maker at the regional office level. In theory, this proposal looks very good. However, the VFW does oppose it because we really believes this innovation will introduce two new significant problem areas.

The first would be a lack of quality control, and second a breakdown of the due process of protection of veteran rights. We can see no advantage to that. We realize that any denial from a one-person decision will automatically be escalated to the existing hearing officer at the regional office. So we are at a loss to understand how this single hearing officer concept at the regional office would improve timeliness.

I will also go back now to Section 2 of the same bill where I discussed the work standard rate. Suppose Section 2 is accepted as it is and we also end up having a one-person decision maker at the regional office. That person could render decisions on as many as five cases a day, 5 workdays a week. He would have done 25 cases. But if he disallowed 12 or 13 of them, he would get credit for what? Ten or twelve cases all week. That would be a bit demoralizing in the VFW's judgment.

Now I will discuss your own draft bill, Mr. Chairman. We generally like the overall thrust of it, but we had three very small suggestions starting with Section 7, the statement to be accepted as proof of relationship. We respectfully suggest that the claimant submit a xerox, a photostatic copy, of the document in question—a marriage certificate, for example. Then, if the VA has further questions on it, just require the applicant, the claimant, to provide a certified copy of the document in question.

Going on to your Section 8, the acceptance of private physician's examination, we very much like that, but we try to swing back and have a more balanced approach. Why not use the private physician's documentation to immediately open an initial claim? Thereafter, if the VA has any questions as that claim is developed or if the veteran comes in for a greater disability on the some medical issue, we would certainly agree that the VA should have the prerogative to use their own doctors on the given medical issue.

Last but not least is your Section 9. We absolutely agree that remanded cases from all agencies should be expeditiously handled, and we respectfully suggest you might want to include the Court of Veterans Appeals there.

This concludes our statement. Thank you, Mr. Chairman.

[The prepared statement of Mr. Manhan appears at p. 78.]

Mr. SLATTERY. Bob, thank you very much, and again I appreciate the input that you have provided us through the months too, and I know we haven't gotten this thing fine-tuned yet, but we are moving in the right direction. Bear with us, okay?

Mr. Howell.

STATEMENT OF EARNEST E. HOWELL

Mr. HOWELL. Good morning, Mr. Chairman. We are grateful to be here this morning, and I will provide a brief summary of our comments on legislation which proposes to make improvements in procedures used by VA in the adjudication of veterans' claims for benefits.

As a whole, AMVETS supports the substance of both bills, and we are optimistic that, when enacted, both will improve VA adjudication. We will begin with an assessment of H.R. 3269.

A common complaint of veterans and their representatives is the perception that veterans' claim folders are being treated like a hot potato, suggesting a policy where pushing the claim down the line is the driving force.

Once VA employee work rate standards are changed so that credit for work is dependent on a final decision on a claim, "top-sheet adjudication" will be less of a temptation. A team approach to claims processing will encourage more attention to quality and less on quantity of work performed. However, VA management will be forced to adjust productivity standards to adequately reflect this holistic approach.

VA regional office directors must be given the same authority as their private industry counterpart to rid the system of nonperformers. Local area VA managers desperately need at least some degree of autonomy for the entire system to function consistently and efficiently.

AMVETS supports the provision of Congressman Evans' bill that would require the VA Secretary to submit an annual report to Congress. It is about time the administration, Congress, and veterans service organizations began working with real numbers so that it will be possible to determine the real value of the VA dollar.

AMVETS supports decisions on veterans' original or reopened claims rendered by a single rating official instead of a rating board but also that all decisions by individual rating officials be subject to review by the chairman. Further, we concur with the provision requiring a hearing official to render a decision without referring the case back to the original rating official who denied the case. BVA decisions must also be open to review by the chairman. Individual autonomy has no place in any form at any level of VA.

AMVETS supports the provisions concerning reconsiderations in their entirety. We particularly appreciate the exclusion of the Board member rendering an initial denial from the section performing reconsideration of that decision.

Correction of obvious errors in veterans' claims as far as AMVETS is concerned is at the very core of VA's delivery of service to veterans. It should be understood in VA that anywhere and any time a mistake is encountered it must be corrected. Obvious errors must trigger prompt corrective action.

AMVETS wholeheartedly supports protecting a veteran's original claim date on VA decisions reversed through clear and unmistakable error. It is unfortunate that a law must be enacted to force VA to abide by its own rules.

Now, Mr. Chairman, a few comments on your draft bill, the Veterans' Adjudication Improvements Act of 1993. Allowing VA pensioners to notify the Secretary only in the event of changes in their eligibility is a win/win situation. Pensioners whose income is not expected to change will no longer have to deal with the threat of termination of a pension due to an annual EVR not arriving to VA on time, and VA pension administrators will realize a substantial reduction in the routine account maintenance.

Reorganization of regional office adjudication divisions will allow local directors to adjust their personal strengths according to work load requirements, to beef up or pare down, as needed.

AMVETS is very wary of regionalizing a VA function that benefits from a veteran's ability to receive personal attention at the intake point. Any changes to the system must retain that local access. Combining pending cases from several regional offices into a central warehouse would create and even greater combined work load, and many of those seeking benefits would be forced to travel greater distances to make contact with the VA system.

AMVETS fully supports the direct transfer upon separation of all military records from the Department of Defense to VA and also the acceptance of valid civilian medical evidence in lieu of VA medical examinations. We also support a veteran's master system with standardized identification and the acceptance of statements from veterans in lieu of official documents where applicable and possible.

The importance of reporting results of pilot programs in VA cannot be overemphasized. Once enacted, this provision would hold the VA Secretary accountable to share lessons learned for the common good.

Finally, Mr. Chairman, VA is struggling to overcome a mountainous case backlog. Many of these claims are remands from BVA. We recommend two possible methods to keep remands out of the routine mainstream. The first would entail establishing a first in/first out priority on remands upon receipt at the regional office. The second would involve setting up special adjudication teams to concentrate solely on remands. Either of these methods would accomplish the intent of the proposed legislation.

Thank you again for allowing AMVETS to share our views on this important issue, and we look forward to working with you on these issues in the future. Thank you.

[The prepared statement of Mr. Howell appears at p. 81.]

Mr. SLATTERY. Mr. Howell, thank you very much, and again I appreciate your help in crafting a solution to this problem, too.

The next witness is Dr. Stenger with the American Ex-Prisoners of War.

Dr. Stenger.

STATEMENT OF CHARLES A. STENGER, Ph.D.

Dr. STENGER. Mr. Chairman, the American Ex-Prisoners of War knows that Secretary Jesse Brown is a strong advocate of the veteran. We know that he is determined to see that DVA fulfills its

obligation. We also know and appreciate the determination of this committee to achieve this end.

We know that VA at the close of World War II was infused with a spirit of compassion and a determination to carry out the wishes of a grateful nation to meet all of the legitimate needs of our returning veterans.

Sadly, we know that gradually over the years that spirit and that compassion has too often gotten sidetracked. The VA today has a very different spirit and a very diminished sense of compassion.

The words that suggest an advocacy role are still mouthed by VA officials, but they do not guide what occurs daily throughout much of the Veterans' Administration. What occurs is a cynical distrust of the veteran and an insensitive, badly misguided determination to find reasons to deny. You rarely see a determination to get a thorough, balanced picture of the veteran's claim, but you often see a focusing on reasons to deny and a blatant failure to do otherwise, and of course the COVA have pointed this out.

The veteran has simply become a piece of paper to be processed mechanically. All the issues of work management minimize what we consider the most important, and that is the quality of what is done for the veteran.

We welcome to proposals contained in H.R. 3269 and the draft bill. However, we would prefer to believe that the Veterans' Administration on its own initiative would truly recognize that it is time for a change, a real change, in how it carries out its responsibility.

While additional personnel are needed, they will do little to make a change in the VA system unless there is a regeneration of the spirit of advocacy and of real compassion for the veteran and a genuine appreciation of their services and sacrifices.

Finally, we do not want to leave the committee with the opinion that our RO's are staffed with people who basically care little about the veteran. We know that is not true. What is needed, badly needed now, is leadership from program directors, BVA officials, and management; a leadership that collectively, genuinely believes in the veteran; is determined to be an advocate; and communicates in unmistakable language that it fully expects its field people to function in that spirit. These things do not exist now. The failures begin at the top. But, Mr. Chairman, it is truly time for a change.

Thank you.

[The prepared statement of Dr. Stenger appears at p. 89.]

Mr. SLATTERY. Okay.

Any questions from the gentleman from Illinois?

Mr. EVANS. Thank you.

The VA has indicated generally its support for certain provisions in my legislation but stated that it preferred the language of the administration's draft proposal. As you know, the draft bill would expand the chairman of BVA's current authority and make certain decisions by him nonreviewable. What are your opinions about the expansion of the chairman's authority in that manner and the preemption of judicial review?

Mr. MANHAN. Thank you, Mr. Evans.

The VFW had testified in previous hearings when we focused on that issue as not agreeing with the Veterans' Administration posi-

tion to allow the chairman to have any nonreviewable decisions. This is not to the veterans' advantage.

Mr. HOWELL. Mr. Evans, as we have testified previously as well as part of my statement this morning, we are adamantly opposed to autonomy at any level within the VA, particularly in an instance that would circumvent a veteran's access to the Court of Veterans Appeals, and if the BVA chairman's decision was rendered final, that would disallow a veteran's final recourse and due process.

Dr. STENGER. Our view is that we are inclined to trust the intentions of the Board of Veterans' Appeals chairman to do the right thing. So we would like to see that person have as broad a power possible to do so but with the reservation that this should not interfere in the right of the veteran to go to the Court of Veterans Appeals.

Mr. EVANS. All right.

Thank you, Mr. Chairman.

Mr. SLATTERY. Any questions from the minority?

Mr. SMITH. No, thank you, Mr. Chairman.

Mr. SLATTERY. Okay. I don't have any questions for this panel either. You all have been very precise in your testimony today, and our earlier conversations have been helpful. I think that I and our team here understand your points, and we again thank you very much for participating. We appreciate it, and we look forward to continuing to work with you as we move this legislation, and hopefully we can get something on the President's desk that will help alleviate the problems that we are all concerned with.

So thank you again for being here today.

Mr. SLATTERY. On our third panel this morning we have Mr. Joseph Violante, the legislative counsel for the Disabled American Veterans; Mr. Keith Snyder, an attorney, president of the National Organization of the Veterans' Advocates, also representing the Veterans Due Process; and Mr. Philip Wilkerson, assistant director of the National Veterans Affairs and Rehabilitation Commission of The American Legion.

Welcome, gentlemen, and we will look forward to your testimony, again, from my right to my left.

Mr. Violante.

STATEMENTS OF JOSEPH A. VIOLANTE, LEGISLATIVE COUNSEL, DISABLED AMERICAN VETERANS; KEITH D. SNYDER, PRESIDENT, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, ALSO REPRESENTING VETERANS DUE PROCESS; AND PHILIP R. WILKERSON, ASSISTANT DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

STATEMENT OF JOSEPH A. VIOLANTE

Mr. VIOLANTE. Thank you, Mr. Chairman, Mr. Evans.

On behalf of the Disabled American Veterans and its Women's Auxiliary, I wish to express our deep appreciation for this opportunity to present our views on legislation that would make improvements in the procedures used by the Department of Veterans Affairs and the Board of Veterans' Appeals.

Mr. Chairman, DAV is pleased with the draft bill introduced by yourself and H.R. 3269 introduced by Mr. Evans. We are encouraged by this legislation, and we believe it will assist the VA in overcoming many of the obstacles that it now faces in the adjudication and appeals procedures. These bills will allow the VA to move forward in attacking its current problems and backlog. DAV supports the provisions of these bills.

Mr. Chairman, presently DAV is participating on the Veterans Benefits Administration Blue Ribbon Panel on Claims Procedures along with representatives from VBA, veterans service organizations, the Board of Veterans' Appeals, and general counsel.

At the heart of the Blue Ribbon Panel's recommendations to improve the claims processing time is the realignment of the rating activity. Currently, the VA's rating activity can be likened to an assembly line approach where many people are responsible for assembling the nuts and bolts of the end product but no one is truly accountable for the final product.

The panel felt that a team approach would help to streamline the process and to provide accountability for the end product. Additionally, the panel felt that the VBA could not achieve significant reductions in backlog without full development of ADP initiatives.

Mr. Chairman, we continue to encourage the VA to conduct pilot programs at a number of regional offices incorporating many of the VSO and panel recommendations. Allowing regional office directors who participate in this pilot program to incorporate these recommendations into their regional office operations will give the subcommittee adequate information upon which they can evaluate the best approach to solving the intolerable delays in the VA's compensation and pension benefits delivery system.

We are encouraged by VA management's willingness to explore new and innovative ways to process veterans' compensation and pension claims. Their recognition that we cannot continue to do business as usual is evident by the scope and variety of VA adjudication pilot projects. An effort must be made to continue to foster even more regional office innovation to improve the delivery of these benefits to veterans and their families.

In looking at ways to redesign the claims process, the New York City regional office is participating in an OMB, White House initiative. This initiative sets up a case management, self-directed work team of highly trained individuals who have shared responsibility for all aspects of the claims development and adjudication process.

Recently, I visited the New York City regional office and was briefed on this concept. I also was provided an opportunity to see firsthand the operation of this work team. Mr. Chairman, I can state that I am profoundly impressed by what I saw and am very enthusiastic about the positive impact this program will have at the VA regional office in New York City.

By the VA's own admission, under the old system of assembly line adjudication, success is measured by the number of claims you move off your desk. The new initiative is changing this measure of success. It will also allow the group to review the process from within and to request waivers of those procedures which do not benefit the claimant. In their words, if it doesn't add value to the process, get rid of it. We believe this is a healthy attitude to have.

The team management concept establishes small, manageable regional offices within the larger regional office, and it more effectively utilizes the available talent. Under the team management concept, every aspect of the claim is handled within the designated unit. Our staff up there at the New York City regional office is also enthusiastic about what has taken place over the past 6 months.

I personally believe, based on my observations, that this new initiative is a win/win situation, and I believe that your bill addresses part of those initiatives in requiring the Secretary to report on them.

Mr. Chairman, many administrative changes to streamline and improve the way VA adjudicates claims have been identified and suggested. These changes alone, however, will not appreciably reduce the ever growing backlog of VA claims. Together, Congress, the VA, and the VSO's must continue to work on this problem and must solve this national crisis.

This concludes my statement. I would be happy to answer any questions you may have.

[The prepared statement of Mr. Violante appears at p. 93.]

Mr. SLATTERY. Okay.

Mr. Snyder.

STATEMENT OF KEITH D. SNYDER

Mr. SNYDER. Good morning. I am speaking for the first time on behalf of the National Organization of Veterans' Advocates. Our members are admitted to practice before the Court of Veterans Appeals. Primarily we are attorneys in private practice, but we also have nonattorney practitioners as part of our organization. I am also here on behalf of Veterans Due Process.

We as an organization, the National Organization of Veterans' Advocates, are particularly interested in the adjudication process at the regional office and at the Board of Veterans' Appeals not just for my any particularly self-serving reason but because so many of our cases that we pick up at the Court of Veterans Appeals end up back at the regional offices and, of course, end up back at the Board of Veterans' Appeals.

Most of what the court is doing these days is simply remanding cases, and one of the biggest reasons that it remands cases is because they were not developed properly in the first place, and the biggest failure in development that we see is the failure to conduct an adequate medical examination in the first place.

Having said that, let me just note that I want to highlight three provisions in my testimony. I am not going to repeat what is there in that statement in full, but I want to speak first on private medical examinations, on that initiative in your measure; secondly, on expanding, not eliminating or decreasing, the details that the annual report must include, that the VA must provide for details; as well as emphasizing the importance of having in statute provisions relating to clear and unmistakable error.

I think the most important issue, from our organization's point of view, that has been proposed in this legislation is to require the VA to accept private medical examination reports. We see over and over, and I must say that I have had cases that go to the court in which I get a remand not just because the examination conducted

by the VA was inadequate but it is because there was no examination.

I think to a great extent the addition of this requirement by statute to permit acceptance of private medical reports would be extremely helpful. Veterans sometimes are seen, VA physicians and those of their treating physicians, and they can provide reports, I think, that would be very useful, very acceptable, for rating purposes. Many veterans don't see VA doctors as treating physicians, and they, in turn, instead have private doctors. Those doctors, I think, are in a very good position because of the length of time that they have been seeing the patient to provide the kind of information and the kind of opinion that the VA needs and that the VA currently does not get, and if the VA gets it these days, they ignore it, which will be addressed in my statement shortly with regard to, I think there ought to be an extension of this provision to adopt what is now used in the Social Security System which is called a treating physician's rule.

But let me just highlight for you first some of the problems with medical examinations that we currently see that I think are devastating to veterans, not only basically the churning of examinations that are scheduled and then canceled in an effort to ensure somehow that the timeliness of scheduling VA exams is met; people are sent notices the day before an exam is to be conducted, and, lo and behold, the exam is canceled, it is rescheduled later, but it would appear that the VA's schedule has been met and they have done what they should have done in a timely fashion, but, in fact, it hasn't happened.

More critically, veterans will show up for an examination, and the first question from the doctor is, "Why are you here?" One would hope that the VA physician examining the veteran would have had some documentation in advance, hopefully a claims folder, hopefully past medical records from VA medical centers where the person had been treated, and hopefully there would have been a request for an examination form the doctor would have consulted to know why this person is there. That often does not appear to be the case.

Even worse than that, the person who is doing the examination is not a specialist in most cases. If an orthopedics disability is at issue, one would hope that there would be an orthopedics specialist at the VA. Instead, what you have prepared is a so-called orthopedics examination report form that comes up on the computer screen to be filled out signed by the doctor. The doctor is not an orthopedics specialist, not board certified in any sense. That is a critical failure. I get those cases after they have been through the Board of Veterans' Appeals; they go to the court; I look at who signed off on an orthopedics opinion; it is not an orthopedist; and what I do is approach the VA attorney, ask for a joint remand to go back for the proper examination 3 years after the original examination was not done correctly. Then we have to hope the reexamination is done appropriately.

That is a serious problem. I think that that can be addressed and dealt with the provision in the statute that would permit acceptance of private medical reports, but I would urge you to extend it to accept, as is used currently in the Social Security System, the

treating physician's rule, so there is greater weight given to the doctor who knows the patient, namely the private physician, then the consultative examiner, the VA doctor who may see the person for 10 minutes. You have got to give greater weight to the private examination or the treating physician.

Let me just skip briefly to reports. I want more on reports. I want to know that if someone goes to a hearing, are they better or less likely to succeed. I think the Board of Veterans' Appeals can produce that kind of information. Hearing officers at the regional office level ought to produce that information as well, whether there was a greater chance of success or failure when you show up for a hearing. It would be very helpful to be able to advise clients as to that.

And just very quickly with regard to clear and unmistakable error, I think it is essential that there be a statutory codification of the current regulations so there can be no doubt and no possibility that the agency will pull back from its current clear and unmistakable error provisions.

Thank you very much for this opportunity. We would look forward to additional comments with regard to any subsequent legislation.

[The prepared statement of Mr. Snyder appears at p. 101.]

Mr. SLATTERY. Thank you, Mr. Snyder. We appreciate it and look forward to working with you also on this. Thank you for your input today.

Mr. Wilkerson.

STATEMENT OF PHILIP R. WILKERSON

Mr. WILKERSON. Good morning, Mr. Chairman and Mr. Evans.

Before discussing the proposed legislation, we first wish to commend you, Mr. Chairman, for your continuing effort to address the backlog of pending claims and the steady deterioration in the timeliness of claims adjudication as well as actions by the Board of Veterans' Appeals.

Secondly, we would like to comment on the fact that we included in our written testimony some discussion of the findings and recommendations of the VA's Blue Ribbon Panel on Claims Processing. Unfortunately, the tentative schedule for the release of the report has not been met, and, as I understand, it is not available although the staff of the committee was briefed. So in order not to preempt the VA, I would just like to make a few general comments concerning about how the panel approached the same issues of quality and timeliness which are the focus of this hearing today and the legislation under consideration.

With regard to H.R. 3269, we support the provision which would require VA to amend its current work rate standards for regional office adjudicators to give credit only when a claim becomes final, meaning that the appeal period has lapsed or there has been a decision by the Board of Veterans' Appeals.

We believe, to a major extent, this could be accomplished in terms of information reporting through an integration of the data systems in use by VBA and the Board. However, we believe there is a serious underlying problem in the current work rate standard

system itself which contributes both directly and indirectly to the backlog.

The system of end products or work credits does not give a complete picture of the amount of work performed or accurate information on the quality and timeliness of the adjudication activity. The number of end products, however, is the basis for measuring a station's productivity and in determining staffing allocations. We believe in order to operate most effectively, management at all levels must have complete data.

VBA is currently working on a number of new information and claims processing systems which are scheduled for implementation under VA's Stage One Computer Modernization Program within the next 1 year to 2 years. These changes may well have an impact on the current work rate standards, and the VA's Blue Ribbon Panel has made a number of recommendations which may also have an impact on the work rate standards. We would therefore like to see VA take a comprehensive approach towards revising and improving the current work rate standard system.

H.R. 3269 also contains extensive reporting provisions requiring detailed information on the status of benefit claims decided by the regional offices. It is unclear to us at this point how much these new requirements would impact on the current data systems or the adjudication work load in developing any additional necessary data. We are concerned that resources may, in fact, be diverted from actual case work to administrative functions in generating such reports.

As with the proposed changes in the work rate standards, we would also like to see VA take a comprehensive approach to the development and implementation of the new claims processing systems to address this particular proposal.

The legislation would authorize single signature rating decisions. We support this change as a way to increase productivity and provide personal accountability for these rating decisions. VBA has, for some months, been testing the use of single-member ratings, and we believe this test needs to be completed and the results reported to this subcommittee at the earliest possible date.

Another beneficial change would authorize the hearing officer to issue a determination without an unnecessary and time-consuming pass-back to the rating board for implementation. We also support the proposed changes to the Board of Veterans' Appeals operations as proposed in H.R. 3269.

Mr. Chairman, your draft bill provides for certain changes in the adjudication process. The American Legion supports these initiatives. They essentially address most of the recommendations put forward by the VSO's earlier this year. We consider these to be important steps towards improving the quality and timeliness of VA's service to veterans.

We had originally hoped the findings and recommendations of the VA's Blue Ribbon Panel on Claims Processing would be highlighted at today's hearing. The panel, which was composed of VA Central Office staff and officials as well as representatives from the Board of Veterans' Appeals, the Office of the General Counsel, VA field stations from across the country, as well as representatives of several of the veterans service organizations, held a series of meet-

ings over a three-month period which focused on identifying the root causes of the main problems leading to or contributing to the current delays in the claims process. The goal was to develop feasible solutions to the problems identified.

The panel very early on recognized there was no magic switch or easy solution to the current work load problem. After intensive analysis, it was apparent that a number of significant changes in the way the regional office adjudication rating activity is structured, the way cases physically flow through the system, expected changes in VA's future ADP support, and that more training was necessary. These changes were considered to be both necessary and achievable within existing resources.

Many of the initiatives proposed could be implemented by the Secretary for the most part by directive within the next 6 months to 18 months without major new resources. These changes should make a real difference in the way cases are handled and improve greatly the service to veterans.

We believe that Congress has a real stake in the success or failure of this project and should do everything possible to encourage, assist, and support VA in doing what needs to be done. Continued oversight, however, will also be an important function of this subcommittee. We therefore look forward to the opportunity in the near future to discuss the panel's specific recommendations in detail and, more importantly, the Secretary's action plan and time frame for their implementation.

That concludes our testimony, Mr. Chairman.

[The prepared statement of Mr. Wilkerson appears at p. 108.]

Mr. SLATTERY. Mr. Wilkerson, thank you very much, and I appreciate your input also.

Any questions from the gentleman from Illinois?

Mr. EVANS. Yes, Mr. Chairman, just a few real quickly because of the vote, and I would like to have some additional questions submitted to this panel.

Mr. SLATTERY. Just for the record, the record will be open, and all the members of the committee, even those that aren't attending today, will have an opportunity to submit questions for the record, and I would appreciate responses from all the panelists here today.

Mr. EVANS. Thank you, Mr. Chairman.

Earlier today, John Vogel stated that the present way work credits are issued should not be changed because the VA is moving to automate this system. He indicated that the Blue Ribbon Panel did not address reforming this process. However, you served on the panel, and your statement today clearly calls for such reform. Did the panel make any recommendations concerning work credits?

Mr. WILKERSON. There was some discussion of that particular aspect of the overall claims process as an identifiable issue. It was not considered, after all was said and done, to be one that the group wanted to recommend—that is, to make any type of change in the current work rate standards.

However, as I indicated, implicit in the intensive discussion and analysis of the current claims process was a concern for improved quality throughout the adjudication process. The thinking was that if the quality was improved, it would address that particular con-

cern that the work rate standards now in effect do not accurately reflect the amount of work being done.

Now there was certainly some difference of opinion on this subject. However, I still believe, and wanted to convey in my statement, that quality in the entire claims process is the goal, and it cannot be accomplished without a major overhaul of the current work rate standards.

While it is partly a function of management to improve the standard of quality, it is also the responsibility of the individual performing the work to do what has to be done within the guidelines that are set for them.

We believe there is an obvious need for improvement. If the recommendations of the panel were fully and promptly implemented, there we would begin to see an improvement in the quality of the work being done.

Apart from the Panel's recommendations, I think there is additional information that would be beneficial to VA management to have, and that is why we suggest that it certainly wouldn't hurt to have them take a close look at the current work rate standards and any deficiencies that may be evident, in light of these concerns.

Mr. EVANS. Thank you, Mr. Chairman.

Mr. SLATTERY. Thank you.

Are there any questions from the minority?

Ms. FORREST. No, Mr. Chairman.

Mr. SLATTERY. We do have a vote on, so I will submit any questions that I would have to you in writing, but I again appreciate the input that all of you have provided today, and a special thankyou to all of the service organizations who have been very patient with me personally in trying to slug through this, and I think we are a lot closer to finding something that is a consensus solution perhaps to this problem than we were 6 months ago, and I give you all credit for that, because it is through your patience in terms of working with me and other members of this committee that I think we have been able to come as far as we have come.

I think we are close to having a package together that we can move after the first of the year that will hopefully work to alleviate the burden that we have right now with this terrible backlog, and before I leave the Congress I am determined to have enacted into law the best possible piece of legislation that we can agree upon to help provide some relief here and to make sure that the veterans that depend on this system so much are in a position to really get justice, to make a long story short.

Again, I thank you very much for being here today, and I wanted to recognize John now—he wanted to make a comment or two—and then we will wrap this up.

Mr. BRIZZI. Thank you very much, Mr. Chairman.

I could not let this opportunity pass, folks, as one staffer to another to once again tell you how much I am going to personally miss my good friend, Sue Forrest. We have been working together now for the past 7 years, and I can tell you that we have a truly unique situation here on our committee that carries over throughout the entire staff. Sue has always been there. Any time that I have ever needed help, she has been quick to respond with quality, professional work. It has truly been a blessing and a pleasure.

We are going to miss you terribly and although it is not polite to say this about a lady, you are leaving behind rather large shoes to fill. I mean that figuratively only.

So, Sue, on behalf of Jean, Arnold, Charlie, and myself, I just want to once again say thank you and God speed to you. Good luck with your golfing. Take care. (Applause.)

Mr. SLATTERY. Sue.

Ms. FORREST. Thank you, John. Those are most kind remarks, and I am most grateful to you for them.

I have obviously enjoyed my work here on the committee for these 18 years and working with John and the other members of the staff. I am definitely going to miss Capitol Hill. It has been a part of my life for a long, long time, and I want to take this opportunity to wish the chairman good luck in his race for governor.

Thank you.

Mr. SLATTERY. Thank you, Sue. And, listen, I join John and all the others, and I am sure I can speak on behalf of every member of this subcommittee and every member of the full committee also in again expressing our gratitude to you for 18 years of dedicated service.

Sue, perhaps one of the highest compliments that we can pay each other in this business is to just say that you are a professional. You have done your duty, and you have done it with dedication, with integrity, with character, and with determination, and you have done it with a real servant attitude. There is not much more that we could say about you, I suppose, than that. That, I think, is as high a compliment as we can pay to one of our team members here.

So thank you very much for all these years of service, and we look forward to seeing you in the future with a good tan after all those hours on the golf course.

Thank you very much. And thank you all for being here today.

[Whereupon, at 11 a.m., the subcommittee was adjourned.]

APPENDIX

103D CONGRESS
1ST SESSION

H. R. 3269

To amend title 38, United States Code, to make improvements in the procedures used by the Department of Veterans Affairs in adjudicating claims for veterans benefits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 13, 1993

Mr. EVANS introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to make improvements in the procedures used by the Department of Veterans Affairs in adjudicating claims for veterans benefits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38,**
4 **UNITED STATES CODE.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Veterans Adjudication Procedures Act of 1993”.

7 (b) REFERENCES TO TITLE 38, UNITED STATES
8 CODE.—Except as otherwise expressly provided, whenever

1 in this Act an amendment or repeal is expressed in terms
2 of an amendment to, or repeal of, a section or other provi-
3 sion, the reference shall be considered to be made to a
4 section or other provision of title 38, United States Code.

5 **SEC. 2. WORK RATE STANDARDS FOR ADJUDICATIVE EM-**
6 **PLOYEES.**

7 (a) IN GENERAL.—(1) Chapter 7 is amended by add-
8 ing at the end the following new section:

9 **“§ 713. Work rate standards for adjudicative employ-**
10 **ees**

11 “(a) The Secretary shall provide that under the work
12 rate standards that apply to employees of the Department
13 who adjudicate claims for benefits that have been submit-
14 ted to the Secretary, those employees do not receive credit
15 for work on a claim until the decision on the claim be-
16 comes final. Such a decision shall not be considered to
17 have become final until the claimant has exhausted, or
18 failed to timely exercise, the right to appellate review by
19 the Board of Veterans’ Appeals.”.

20 (2) The table of sections at the beginning of such
21 chapter is amended by adding at the end the following
22 new item:

“713. Work rate standards for adjudicative employees.”.

23 (b) EFFECTIVE DATE.—Section 713 of title 38,
24 United States Code, as added by subsection (a), shall
25 apply with respect to claims for benefits that are submit-

1 ted to the Secretary of Veterans Affairs after the end of
2 the 180-day period beginning on the date of the enactment
3 of this Act.

4 **SEC. 3. ANNUAL REPORT ON STATUS OF CLAIMS FOR BENE-**
5 **FITS.**

6 (a) IN GENERAL.—(1) Chapter 5 is amended by in-
7 serting after section 529 the following new section:

8 **“§ 530. Annual report on status of claims for benefits**

9 “(a) The Secretary shall submit to the Congress an
10 annual report on the status of claims for benefits before
11 the Department during the preceding fiscal year (begin-
12 ning with the third fiscal year ending after the date of
13 the enactment of this section). The report for any fiscal
14 year shall be submitted in conjunction with the report
15 under section 7101(d) of this title for that year. Each such
16 report shall separately set forth, with regard to claims for
17 benefits in which a decision of the agency of original juris-
18 diction or the Board of Veterans’ Appeals became final
19 during the preceding fiscal year, the average number of
20 days that passed from the date on which the claim was
21 initially received by the Department until the following
22 dates, as applicable:

23 “(1) The date on which the notice of decision
24 was provided to the claimant, for those cases in

1 which the claimant did not file a timely notice of dis-
2 agreement (along with the number of such cases).

3 “(2) The date on which the statement of the
4 case was provided to the claimant, for those cases in
5 which the claimant filed a timely notice of disagree-
6 ment, and the agency of original jurisdiction did not
7 conduct a hearing, and the claimant did not file a
8 timely substantive appeal to the Board of Veterans’
9 Appeals (along with the number of such cases).

10 “(3) The date on which the statement of the
11 case was provided to the claimant or the date on
12 which the notice of the decision rendered after the
13 conduct of a hearing of the agency of original juris-
14 diction, whichever is later, for those cases in which
15 the claimant filed a timely notice of disagreement,
16 and agency of original jurisdiction conducted a hear-
17 ing, and the claimant did not file a timely sub-
18 stantive appeal to the Board of Veterans’ Appeals
19 (along with the number of such cases).

20 “(4) The date on which the notice of the Board
21 of Veterans’ Appeals decision was provided to the
22 claimant, for those cases in which the Board of Vet-
23 erans’ Appeals did not remand to the agency of
24 original jurisdiction before issuing its decision and
25 neither the agency of original jurisdiction nor the

Board of Veterans' Appeals conducted a formal hearing (along with the number of such cases).

“(5) The date on which the notice of the Board of Veterans' Appeals decision was provided to the claimant, for those cases in which the agency of original jurisdiction conducted a hearing, and the Board of Veterans' Appeals issued a decision on the appeal of the claim without conducting a formal hearing and without remanding the appeal to the agency of original jurisdiction before issuing its decision (along with the number of such cases).

“(6) The date on which the notice of the Board of Veterans' Appeals decision was provided to the claimant, for those cases in which the agency of original jurisdiction conducted a hearing and the Board of Veterans' Appeals issued a decision on the appeal of the claim after conducting a formal hearing and without remanding the appeal to the agency of original jurisdiction before issuing its decision (along with the number of such cases).

“(7) The date on which the notice of the Board of Veterans' Appeals decision was provided to the claimant, for those cases in which the agency of original jurisdiction did not conduct a hearing, and the Board of Veterans' Appeals issued a decision on

1 the appeal of the claim after conducting a formal
2 hearing and without remanding the appeal to the
3 agency of original jurisdiction before issuing its deci-
4 sion (along with the number of such cases).

5 “(8) The date on which the notice of the Board
6 of Veterans’ Appeals final decision was provided to
7 the claimant, for those cases in which the Board of
8 Veterans’ Appeals did not conduct a formal hearing
9 and remanded the case on one or more occasions to
10 the agency of original jurisdiction before issuing its
11 final decision (along with the number of such cases).

12 “(9) The date on which the notice of the Board
13 of Veterans’ Appeals final decision was provided to
14 the claimant, for those cases in which the Board of
15 Veterans’ Appeals conducted a formal hearing and
16 remanded the case on one or more occasions to the
17 agency of original jurisdiction before issuing its final
18 decision (along with the number of such cases).

19 “(b) Each such report shall also set forth the number
20 of claims for benefits pending a final decision as of the
21 end of the fiscal year preceding the submission of the
22 report.”.

23 (2) The table of sections at the beginning of such
24 chapter is amended by inserting after the item relating
25 to section 529 the following new item:

“530. Annual report on status of claims for benefits.”.

1 (b) EFFECTIVE DATE.—Section 530 of title 38,
2 United States Code, as added by subsection (a), shall
3 apply only with respect to claims for benefits that are re-
4 ceived by the Secretary of Veterans Affairs more than 180
5 days after the date of the enactment of this Act.

6 **SEC. 4. OFFICIALS DETERMINING ORIGINAL AND RE-**
7 **OPENED CLAIMS FOR BENEFITS.**

8 (a) IN GENERAL.—Subchapter I of chapter 51 is
9 amended by adding at the end the following:

10 **“§ 5109A. Officials acting on behalf of Secretary**

11 “(a) The functions of the Secretary under this chap-
12 ter in making determinations on a claim for benefits filed
13 under this chapter shall be carried out in each case by
14 a single official (known as a ‘rating official’). A single rat-
15 ing official (rather than a board of officials) shall make
16 the initial determination of the Secretary on all original
17 and reopened claims filed with the Secretary.

18 “(b) Whenever a hearing is requested following a de-
19 cision of a rating official denying (in whole or in part)
20 a claim for benefits, the official who conducts the hearing
21 shall make a determination in the case without referring
22 the case back to the rating official who initially decided
23 the case (or another rating official) and shall issue a deci-
24 sion on the case in the manner prescribed in section 5104
25 of this title.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of such chapter is amended by inserting
3 after the item relating to section 5109 the following new
4 item:

“5109A. Officials acting on behalf of Secretary.”.

5 **SEC. 5. BOARD OF VETERANS' APPEALS PROCEDURES.**

6 (a) TERMINATION OF ACTION BY BVA THROUGH
7 SECTIONS.—(1) Sections 7102 and 7103 are amended to
8 read as follows:

9 **“§ 7102. Decisions by the Board**

10 “A proceeding instituted before the Board shall be
11 assigned to an individual member of the Board (other than
12 the Chairman). A member who is assigned a proceeding
13 shall make a determination thereon, including any motion
14 filed in connection therewith. The member shall make a
15 report under section 7104(d) of this title on any such de-
16 termination, which report shall constitute the member's
17 final disposition of the proceeding.

18 **“§ 7103. Reconsideration; correction of obvious errors**

19 “(a) The decision of the member of the Board deter-
20 mining a matter under section 7102 of this title is final
21 unless the Chairman order reconsideration of the case.
22 Such an order may be made on the Chairman's initiative
23 or upon motion of the claimant.

24 “(b) If the Chairman orders reconsideration in a
25 case, the case shall upon reconsideration be heard by a

1 section of the Board. Any such section shall consist of not
 2 less than three members (and may include the Chairman).
 3 The member of the Board who made the decision under
 4 reconsideration may not serve as a member of the section.

5 “(c) When a case is heard by a section of the Board
 6 after such an order for reconsideration, the decision of a
 7 majority of the members of the section shall constitute the
 8 final decision of the Board.

9 “(d) The Board on its own motion may correct an
 10 obvious error in the record, without regard to whether
 11 there has been a motion or order for reconsideration.”.

12 (2) The items relating to sections 7102 and 7103 in
 13 the table of sections at the beginning of chapter 71 are
 14 amended to read as follows:

“7102. Decisions by the Board.

“7103. Reconsideration; correction of obvious errors.”.

15 (b) CONFORMING AMENDMENTS.—(1) Section 7110
 16 is amended by striking out “section” both places it ap-
 17 pears and inserting in lieu thereof “member”.

18 (2)(A) The heading of section 7110 is amended to
 19 read as follows:

20 **“§ 7110. Traveling members”.**

21 (B) The item relating to section 7110 in the table
 22 of sections at the beginning of chapter 71 is amended to
 23 read as follows:

“7110. Traveling members.”.

1 **SEC. 6. REVISION OF DECISIONS BASED ON CLEAR AND UN-**
2 **MISTAKABLE ERROR.**

3 (a) ORIGINAL DECISIONS.—(1) Chapter 51 is amend-
4 ed by inserting after section 5109A, as added by section
5 4, the following new section:

6 **“§5109B. Revision of decisions on grounds of clear**
7 **and unmistakable error**

8 “(a) A decision by the Secretary under this chapter
9 is subject to revision on the grounds of clear and unmis-
10 takable error. If evidence establishes the error, the prior
11 decision shall be reversed or revised.

12 “(b) For the purposes of authorizing benefits, a rat-
13 ing or other adjudicative decision that constitutes a rever-
14 sal or revision of a prior decision on the grounds of clear
15 and unmistakable error has the same effect as if the deci-
16 sion had been made on the date of the prior decision.

17 “(c) Review to determine whether clear and unmis-
18 takable error exists in a case may be instituted by the Sec-
19 retary on the Secretary’s own motion or upon request of
20 the claimant.

21 “(d) A request for revision of a decision of the Sec-
22 retary based on clear and unmistakable error may be made
23 at any time after that decision is made.

24 “(e) Such a request shall be submitted to the Sec-
25 retary and shall be decided in the same manner as any
26 other claim.”.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 5109A, as added by section 4, the following new item:

“5109B. Revision of decisions on grounds of clear and unmistakable error.”.

(b) BVA DECISIONS.—(1) Chapter 71 is amended by adding at the end the following new section:

7 **“§ 7111. Revision of decisions on grounds of clear and**
8 **unmistakable error**

9 “(a) A decision by the Board is subject to revision
10 on the grounds of clear and unmistakable error. If evi-
11 dence establishes the error, the prior decision shall be re-
12 versed or revised.

“(b) For the purposes of authorizing benefits, a rat-
ing or other adjudicative decision of the Board that con-
stitutes a reversal or revision of a prior decision of the
Board on the grounds of clear and unmistakable error has
the same effect as if the decision had been made on the
date of the prior decision.

19 “(c) Review to determine whether clear and unmis-
20 takable error exists in a case may be instituted by the
21 Board on the Board’s own motion or upon request of the
22 claimant.

23 “(d) A request for revision of a decision of the Board
24 based on clear and unmistakable error may be made at
25 any time after that decision is made.

1 “(e) Such a request shall be submitted directly to the
2 Board and shall be decided by the Board on the merits,
3 without referral to any adjudicative or hearing official act-
4 ing on behalf of the Secretary.

5 “(f) A claim filed with the Secretary that requests
6 reversal or revision of a previous Board decision due to
7 clear and unmistakable error shall be considered to be a
8 request to the Board under this section, and the Secretary
9 shall promptly transmit any such request to the Board for
10 its consideration under this section.”.

11 (2) The table of sections at the beginning of such
12 chapter is amended by adding at the end the following
13 new item:

“7111. Revision of decisions on grounds of clear and unmistakable error.”.

14 (c) **EFFECTIVE DATE.**—(1) Section 5109B and 7110
15 of title 38, United States Code, apply to any determination
16 made before, on, or after the date of the enactment of
17 this Act.

18 (2) Notwithstanding section 402 of the Veterans Ju-
19 dicial Review Act (38 U.S.C. 7251 note), chapter 72 of
20 title 38, United States Code, shall apply with respect to
21 any decision of the Board of Veterans’ Appeals on a claim
22 alleging that a previous determination of the Board was
23 the product of clear and unmistakable error if that claim
24 is filed after, or was pending before the Department of
25 Veterans Affairs, the Court of Veterans Appeals, the

- 1 Court of Appeals for the Federal Circuit, or the Supreme
- 2 Court on the date of the enactment of this Act.

[DISCUSSION DRAFT]

NOVEMBER 5, 1993

103D CONGRESS
1ST SESSION**H. R.** __________

IN THE HOUSE OF REPRESENTATIVESMr. SLATTERY introduced the following bill; which was referred to the
Committee on _____**A BILL**To make improvements in the adjudication process at the
Department of Veterans Affairs.1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*3 **SECTION 1. SHORT TITLE.**4 This Act may be cited as the “Veterans’ Adjudication
5 Improvements Act of 1993”.

1 **SEC. 2. ELIMINATION OF REQUIREMENT FOR ANNUAL IN-**
2 **COME QUESTIONNAIRES.**

3 Section 1506 of title 38, United States Code, is
4 amended—

5 (1) in paragraph (2), by striking out “shall”
6 and inserting in lieu thereof “may”; and

7 (2) in paragraph (3), by striking out “file a re-
8 vised report” and inserting in lieu thereof “notify
9 the Secretary”.

10 **SEC. 3. REPORT ON FEASIBILITY OF REORGANIZATION OF**
11 **ADJUDICATION DIVISIONS IN VBA REGIONAL**
12 **OFFICES.**

13 The Secretary shall, not later than 180 days after
14 the date of enactment of this Act, submit to the Commit-
15 tees on Veterans' Affairs of the Senate and House of Rep-
16 resentatives a report addressing the feasibility and impact
17 of a reorganization of the adjudication divisions located
18 within the regional offices of the Veterans Benefits Ad-
19 ministration to a number of such divisions that would re-
20 sult in improved efficiency in the processing of claims filed
21 by veterans, their survivors, or other eligible persons, for
22 benefits administered by the Secretary.

23 **SEC. 4. TRANSFER OF MILITARY SERVICE MEDICAL**
24 **RECORDS.**

25 The Secretary shall, not later than 90 days after the
26 date of enactment of this Act, submit to the Committees

1 on Veterans' Affairs of the Senate and House of Rep-
2 resentatives a report detailing the status of an agreement
3 with the Secretary of Defense to provide for the immediate
4 transfer to the Department upon the separation from ac-
5 tive duty of a member of the Armed Forces of the service
6 medical records of such member.

7 **SEC. 5. MASTER VETERAN RECORD.**

8 The Secretary shall, not later than one year after the
9 date of enactment of this Act, initiate the development of
10 a recordkeeping system whereby each veteran or other eli-
11 gible person shall be identified by a single identification
12 number, and through which information relating to the
13 veteran, including the veteran's current eligibility or enti-
14 tlement status with respect to each benefit or service ad-
15 ministered by the Secretary, shall be available through
16 electronic means to employees of the Department located
17 in each regional office of the Veterans Benefits Adminis-
18 tration or medical center of the Veterans Health Adminis-
19 tration.

20 **SEC. 6. REPORT ON PILOT PROGRAMS.**

21 (a) **IN GENERAL.**—The Secretary shall, not later than
22 180 days after the date of enactment of this Act, shall
23 submit to the Committees on Veterans' Affairs of the Sen-
24 ate and House of Representatives a report enumerating
25 and describing pilot programs and major initiatives being

1 tested in the regional offices of the Veterans Benefits Ad-
2 ministration which affect the adjudication of claims for
3 benefits administered by the Secretary.

4 (b) CONTENTS.—The report shall include the Sec-
5 retary's recommendations regarding the need, if any, for
6 legislation to implement any of such pilot programs the
7 Secretary may recommend. If the Secretary indicates that
8 no legislation is required to implement one or more of such
9 programs the Secretary shall advise the Committees as to
10 whether any such pilot program will be implemented and
11 provide a timetable for such implementation.

12 **SEC. 7. STATEMENTS TO BE ACCEPTED AS PROOF OF RELA-**
13 **TIONSHIPS.**

14 Notwithstanding any other provision of law, for pur-
15 poses of benefits administered by the Secretary, the Sec-
16 retary shall accept as proof of the existence of a marriage,
17 the dissolution of a marriage, birth of a child, or death
18 of any family member, the written statement of a claimant
19 for the purpose of acting on such individual's claim for
20 benefits. The Secretary may require the submission of doc-
21 umentation in support of such statement if the statement
22 on its face raises a question as to its validity.

1 **SEC. 8. ACCEPTANCE OF PRIVATE PHYSICIAN EXAMINA-**
2 **TIONS.**

3 Notwithstanding any other provision of law, for pur-
4 poses of establishing a claim for disability compensation
5 under chapter 11 of title 38, United States Code, a medi-
6 cal examination report of a private physician provided by
7 a claimant in support of a claim for benefits under such
8 chapter shall be accepted without confirmation by an ex-
9 amination by a physician employed by the Veterans Health
10 Administration if such report contains sufficient clinical
11 data to support the diagnosis of a disability or to provide
12 a reliable basis for an evaluation of the degree of any such
13 disability.

14 **SEC. 9. EXPEDITED TREATMENT OF REMANDED CLAIMS.**

15 The Secretary shall take such actions as may be nec-
16 essary to provide for the expeditious treatment, by the
17 Board of Veterans' Appeals and by the regional offices of
18 the Veterans Benefits Administration, of any claim that
19 has been remanded by the Board of Veterans' Appeals for
20 additional development or other appropriate action.

**THE HONORABLE MICHAEL BILIRAKIS
THE SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
NOVEMBER 17, 1993**

THANK YOU, MR. CHAIRMAN.

FIRST, LET ME TAKE THIS OPPORTUNITY TO COMMEND YOU FOR SCHEDULING THIS HEARING ON THE CLAIMS ADJUDICATION OF VETERANS' BENEFIT. THIS IS THE LATEST IN AN ONGOING SERIES OF HEARINGS ON A VERY IMPORTANT ISSUE.

I AM ANXIOUS TO TAKE WHATEVER ACTIONS ARE NECESSARY TO ASSIST THE VBA AND BVA IN PROVIDING QUALITY DECISION-MAKING AND ALLEVIATING THESE HUGE BACKLOGS IN BENEFIT CLAIMS. CLEARLY, THE NATION'S VETERANS DESERVE THE TIMELY ADJUDICATION OF THEIR CLAIMS.

I AM ANXIOUS TO HEAR THE VETERANS SERVICE ORGANIZATIONS COMMENTS ON H.R. 3269, A BILL INTRODUCED BY OUR COLLEAGUE MR. LANE EVANS, AND A DRAFT BILL TO MAKE IMPROVEMENTS IN THE VA ADJUDICATION PROCESS.

CONGRESSMAN CHRIS SMITH HAS ASKED ME TO SUBMIT A QUESTION FOR THE RECORD ON HIS BEHALF. THEREFORE, I WOULD LIKE TO REQUEST THAT HIS QUESTION BE ENTERED INTO THE RECORD.

AS ALWAYS, I LOOK FORWARD TO WORKING WITH YOU AND THE OTHER MEMBERS OF THE SUBCOMMITTEE ON ANY SUGGESTIONS THE VETERANS SERVICE ORGANIZATIONS MAY HAVE ON THE ISSUES BEFORE THE SUBCOMMITTEE TODAY.

THANK YOU MR. CHAIRMAN.

STATEMENT OF
CHARLES L. CRAGIN
CHAIRMAN, BOARD OF VETERANS' APPEALS
AND
R. JOHN VOGEL
DEPUTY UNDER SECRETARY FOR BENEFITS
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES
NOVEMBER 17, 1993

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to present the views of the Department of Veterans Affairs on H.R. 3269, the "Veterans Adjudication Procedures Act of 1993," and on your draft "Veterans' Adjudication Improvements Act of 1993."

H.R. 3269

VA opposes enactment of this bill, whose provisions we wish to discuss in order. Section 2 of H.R. 3269 would provide that VA employees who adjudicate benefit claims will not receive credit for work on a claim until the claim decision becomes final. A claim decision is not to be considered "final" for these purposes until the claimant has exhausted, or failed to timely exercise, the right to appellate review by the Board of Veterans' Appeals (Board). This section is apparently intended to improve claims development and decisions at the agency of original jurisdiction and thereby decrease the number of cases remanded by the Board. Its major effect, however, would be quite different.

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One problem with this section is that it does not specify when a claimant has exhausted the right to appellate review by the Board. We can confidently predict, however, that under this provision claims adjudicators would not be credited for their work on a claim until at least a year later. This delay would interfere with VA's budgetary process because VA determines its staffing needs on the basis of completed and anticipated work. The work-rate standard mandated in section 2 would affect VA's ability to justify requests for staffing changes and, because of the record-keeping requirements, make much more burdensome the process of determining when work credits are warranted.

Whereas section 2 of H.R. 3269 would require no change in the adjudication process itself, VA has taken a number of steps to modernize this process, which should enable claims adjudicators to make better decisions faster. These include automated checklists to ensure that all proper steps in the claims-adjudication process are completed; researching ways to automate the production of claims decisions; automating the monitoring of claims folders; and making VA regulations and manuals available to adjudicators "on line." The Compensation and Pension Service also conducts an extensive centralized training program for its adjudicators, and the Veterans Benefits Administration has established a service-medical-records center in St. Louis to expedite the forwarding of service medical records to regional offices when compensation claims are filed.

Recently, the Blue Ribbon Panel on Claims Processing conducted its third and last session. It is now formulating an action plan to meet the objectives of reducing both the time it takes adjudicators to decide benefit claims and the backlog of claims. The Panel focused on improving the development of evidence and reducing the time cases remain in

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rating boards. The plan offers 42 specific recommendations to accomplish improvements. Its recommendations include realigning all functions necessary to a claims decision into a redesigned "rating activity"; improving Compensation and Pension examination reports; facilitating the timely receipt of evidence from other federal agencies, including service medical records from the Department of Defense; and more effectively communicating with claimants. The Panel also proposes establishing a working group, representing VA, veterans service organizations, and legal experts from outside the area of veterans law, to review current adjudication regulations and procedures with the goal of making them more efficient, clearer, and easier for claimants and adjudicators to understand and follow.

In sum, section 2 of H.R. 3269 would place new and unhelpful record-keeping demands on VA at a time when available resources should be applied to ongoing efforts to reducing our claims backlog.

Section 3 of H.R. 3269 would require the Secretary to annually report to Congress several statistics concerning decisions on benefits claims, by either the agency of original jurisdiction or the Board, that became final during the preceding fiscal year. The statistics would include the average number of days passing from VA's initial receipt of a benefits claim until (1) notification of a decision without the timely initiation of an appeal, (2) issuance of a statement of the case without a hearing held or the timely perfection of the appeal, (3) the later of the issuance of a statement of the case or notification of a decision after a hearing, without timely perfection of the appeal, (4) notification of a Board decision without remand to the agency of original jurisdiction and with no hearing, (5) notification of a Board decision with a hearing before the

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agency of original jurisdiction but no remand to the agency of original jurisdiction and no hearing before the Board, (6) notification of a Board decision with a hearing before the agency of original jurisdiction and a hearing before the Board but no remand to the agency of original jurisdiction, (7) notification of a Board decision with a hearing before the Board but no hearing before the agency of original jurisdiction and no remand to the agency of original jurisdiction, (8) notification of a Board decision without a hearing before the Board but with a remand to the agency of original jurisdiction, and (9) notification of a Board decision with a hearing before the Board and a remand to the agency of original jurisdiction, as well as the number of claims awaiting a final decision as of the fiscal year preceding the report.

In addition to the diversion of resources from more productive tasks that would result from this provision, the utility of the resultant data must be questioned. We already know that claimants wait too long for a decision on their claims. This section would do nothing to remedy that situation and would add another burdensome report when we are all working to streamline government.

Compliance would require at least BVA to modify its case-tracking system to include information on hearings at the agency of original jurisdiction. Such a change would entail a one-time cost of \$5,000 for the database change and a recurring cost of \$144,327 per year (based on current rates of pay) for an additional quarter hour of paralegal time per case docketed. We estimate the costs for computer time and related personnel to produce the reports at \$852. Thus, the total first-year cost to BVA for the report would be \$150,179. VA opposes enactment of section 3.

Section 4 of H.R. 3269 would require that an individual, known as a "rating official," rather than a rating board, make the "initial determination" on all original and reopened claims. It would also require that, if a hearing is requested after such a determination denying a claim for benefits, the official who conducts the hearing make a determination in the case without referring the case to any other official.

VA opposes the enactment of this section. The Secretary now has the authority to authorize individual rating officials, rather than rating boards, to adjudicate claims. VA is studying the decision process and is testing the use of one-signature rating decisions under controlled conditions. We believe, however, that it is inappropriate to relinquish all control over the quality of decisions crucial to the outcome of a claim. It is in veterans' best interest for the Secretary to retain the flexibility to adjust claims-adjudication procedures to most effectively meet the process's most pressing needs. The provision concerning adjudications by hearing officers would codify a program VA initiated in 1988. Under VA's hearing officer program, experienced claims examiners, known as hearing officers, who did not participate in the initial determinations conduct most personal hearings in benefits claims and decide the claims without referring them back to the initial or other adjudicators. VA's hearing officers may reverse or amend a prior determination on the basis of new and material evidence. In addition, a hearing officer may recommend that a decision be changed based on a difference of opinion, subject to central office approval, or may recommend a finding of clear and unmistakable error, subject to approval of the adjudication officer. This program provides appropriate review without undermining the initial decision process or the appellate process.

Section 5 of H.R. 3269 would require that the determination on a "proceeding instituted before the Board," including any motion filed in connection therewith, be made by an individual Board member other than the Chairman. Section 5 would also require that, when the Chairman orders reconsideration in a case, a section of at least three Board members, which may include the Chairman but may not include the member who originally decided the case, shall hear the case, and that the decision of a majority of that section shall constitute the final decision of the Board. The section also authorizes the Board to correct an obvious error in the record regardless of any motion or order for reconsideration.

VA strongly supports authorizing individual Board members to decide appeals, and has included such a provision in its own proposed legislation, the "Veterans' Appeals Improvement Act of 1993." However, for several reasons, VA favors its own legislative proposal over section 5 of H.R. 3269. First, in replacing current 38 U.S.C. § 7102 with the language in proposed 38 U.S.C. § 7102, section 5 of H.R. 3269 does not provide for who may assign a "proceeding instituted before the Board" to an individual Board member. Current section 7102 authorizes the Chairman to assign proceedings to Board sections, and VA's proposed legislation authorizes the Chairman to assign any matter before the Board to a Board member for decision. Second, section 5 of H.R. 3269 would not allow the Chairman to decide any matter or rule on any motion in connection therewith (other than voting in a reconsideration section). VA's proposed legislation, on the other hand, by giving the Chairman the authority to make determinations on matters before the Board, enables the Chairman to rule on procedural motions and other matters not requiring extensive familiarity with all the evidence in a case, thereby freeing the other Board members to review and decide cases on the merits. Third, section 5 of H.R. 3269

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would remove the Chairman's authority in current 38 U.S.C. § 7102(a)(2)(A)(ii) to appoint acting Board members, an authority preserved in VA's proposed legislation and important to keeping a full complement of Board members working on appeals when the approval process for Board-member appointments can consume so much time. Fourth, section 5 of H.R. 3269 removes the requirement in current 38 U.S.C. § 7102(b), which VA's proposed legislation also preserves, that a hearing docket be maintained and that formal recorded hearings be held by the Board member or members who will make the final determination in the appeal.

VA also prefers its own proposed legislation over section 5 of H.R. 3269 with regard to reconsideration procedures. The language of section 5 ("the case *shall* upon reconsideration *be heard* by a section" (emphasis added)) could be construed as requiring a hearing before the Board on all reconsiderations whether or not the appellant wants one. VA's proposed legislation avoids that problem by using different language.

Section 6(a) of H.R. 3269 would make the Secretary's decisions on claims, effective dates, and payments subject to revision on the basis of clear and unmistakable error. Reversal or revision of a prior decision on this basis would be effective the date of the original decision. Review to determine the existence of such error could be initiated on the Secretary's own motion or upon request of a claimant, and such requests, to be treated as any other claim, could be made any time after the decision being reviewed was made. Section 6(b) would make Board decisions subject to revision on the same basis and would provide that only the Board shall decide claims alleging clear and unmistakable error in a prior Board decision. Section 6(c) would make those provisions applicable to any determination and subject to review by the

United States Court of Veterans Appeals any Board decision on a claim of clear and unmistakable error that was filed after or was pending before VA, the Court of Veterans Appeals, the Court of Appeals for the Federal Circuit, or the United States Supreme Court on the date of enactment of H.R. 3269.

Section 6(a) would provide in law what VA already provides in its regulations and claims-adjudication process. Currently, an allegation of error in a decision requires a review of that decision for correctness. Under the provisions of 38 C.F.R. § 3.105(a), a finding of clear and unmistakable error requires reversal or amendment of the erroneous decision. A corrected decision is effective as if the previous, incorrect decision had never been made. The time during which clear and unmistakable error may be alleged is not restricted. Such allegations are treated as other claims, even to the extent that the United States Court of Veterans Appeals has held that, "[o]nce there is a final decision on the issue of 'clear and unmistakable error' because the [agency of original jurisdiction] decision was not timely appealed, or because a [Board] decision not to revise or amend was not appealed to th[e] Court, or because th[e] Court has rendered a decision on the issue in that particular case, that particular claim of 'clear and unmistakable error' may not be raised again." *Russell v. Principi*, 3 Vet. App. 310, 315 (1992). Although we have no particular objections to the provisions of section 6(a) of H.R. 3269, we believe that existing law and regulations already afford the same protections so that the additional legislation is unnecessary.

In the interests of the finality of administrative appellate decisions, VA opposes the provisions of section 6(b) and (c). The Board already has the authority, under current 38 U.S.C. § 7103(c), to correct an obvious error in the record, and the Chairman has the authority, under 38 U.S.C.

§ 7103(a), to order reconsideration of a prior Board decision. Under current regulations, the Chairman may order reconsideration on the Board's own motion or on an appellant's motion upon an allegation of obvious error of fact or law. At a time when the Board is struggling to achieve acceptable response times in working its already heavy caseload, enactment of this provision could require it to review, on demand, literally hundreds of thousands of its past decisions, including those entered decades ago.

Section 6(c) would in effect rescind the limitation, in section 402 of the Veterans Judicial Review Act, on which Board decisions are subject to review by the Court of Veterans Appeals. By subjecting to Court review any Board decision on a claim of clear and unmistakable error in a prior Board decision, section 6(c) would also subject the prior Board decision to Court review, because the Court could not determine whether a prior Board decision involved clear and unmistakable error without examining that prior decision. Thus the Court could review any Board decision, regardless of when the notice of disagreement was filed, which was reviewed on a claim of clear and unmistakable error. Such wide-ranging review would seem very much at odds with the carefully circumscribed review afforded under the original Veterans Judicial Review Act.

We consider the bill as a whole to be very ill-advised, and predict it would lead to even greater delays for our claimants than they must now endure. For all of the above reasons, we strenuously oppose its enactment.

Veterans' Adjudication Improvements Act of 1993

VA generally supports enactment of the "Veterans' Adjudication Improvements Act of 1993," the draft bill the

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Subcommittee Chairman provided for comment, and would be happy to work with the Subcommittee to develop improvements which would help VA better use its resources and provide better service to beneficiaries.

Section 2 of the draft bill would give the Secretary the discretion to require pension applicants or recipients to annually file a report on their annual income and corpus of estate. Under current 38 U.S.C. § 1506, the Secretary must require the filing of such reports as a condition of granting or continuing pension. A large proportion of our beneficiaries, however, have either no income or only Social Security benefits as income. For several years, VA has been able to verify Social Security income by computer matching. In general, we support this grant of discretionary authority. We believe that much of the information gathered by these annual reports can be verified through other means, such as the Social Security match mentioned above.

If given this authority, we would develop criteria for exemptions that are consistent with the need to maintain program integrity, and implement our policy through notice-and-comment rulemaking so that veterans service organizations and other interested parties would have an opportunity to comment on the policy.

Section 3 of the draft bill would require the Secretary to report to Congress on the "feasibility and impact" of a reorganization of regional office adjudication divisions. The supreme priority of VA is to act in the best interest of our nation's veterans. Any reorganization of adjudication divisions would have to advance this objective. Access by veterans and their representatives to claims adjudicators is critical and cannot be compromised. We cannot ignore, however, the growing complexity of our programs. The study

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mandated by this section may be a useful starting point to build a consensus and to protect the best interests of our veterans. Therefore, we favor this provision.

Section 4 of the draft bill would require the Secretary to report to Congress on the status of an agreement between him and the Secretary of Defense on immediately transferring to VA the service medical records of members of the Armed Forces upon their separation from active duty. We hope to be able to report complete success on this agreement because it is one of the ways VA can expedite claims adjudication.

Section 5 of the draft bill would require the Secretary to begin developing a record-keeping system with one identification number for each beneficiary and information on each beneficiary available electronically to VA field employees. As the Subcommittee is aware, we are currently developing a strategy to implement a comprehensive Master Veteran Record for the Department. We do appreciate the Subcommittee's interest in this topic, but feel that such a legislative amendment is unnecessary. However, we will be happy to keep the Subcommittee fully informed of all the activities regarding this important initiative.

Section 6 of the draft bill would require the Secretary to enumerate and describe to Congress pilot programs and major initiatives being tested in regional offices which affect the adjudication of benefit claims, and to recommend legislation necessary to implement such programs. These programs and initiatives represent our hope for the future. The teamwork that has emerged from the recent Blue Ribbon Panel enhances these programs and initiatives. We are excited and hopeful about them as we prepare to move into the next century and look forward to sharing reports of our success with Congress.

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Section 7 of the bill would require the Secretary to accept as proof of certain relationships the written statement of a claimant and authorize the Secretary to require supporting documentation if such a statement on its face raises a question as to its validity. We appreciate the Subcommittee's intent of further streamlining the adjudication process. However, we feel that further consideration of this provision is warranted before the Department could offer its support. For example, such a policy could have significant implications for program integrity. Until this and other potential adverse effects could be explored, we would ask the Subcommittee to defer action on this provision.

Section 8 would require the Secretary to accept, without confirmation by an examination by a physician employed by the Veterans Health Administration, an examination report of a private physician provided by a claimant in support of a claim for disability compensation if the report contains sufficient clinical data to support the diagnosis or provide a reliable basis for evaluating the degree of disability. Once again, we support the Subcommittee's intent, but must raise concerns of program integrity. We are currently considering this change within the Administration and would ask the Subcommittee to defer action until we can complete our review of this policy. It is also worth noting that this provision could be implemented through regulation if the Administration determines it is warranted.

Section 9 of the draft bill would require the Secretary to provide expeditious treatment for all cases that the Board of Veterans Appeals has remanded, both at the regional office and at the Board. VA now does everything it can to decide all claims as quickly as possible without sacrificing quality or due process. For example, the Board considers appeals in the order of their docket numbers, and because remanded cases

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retain their original docket numbers, the Board considers them before later-docketed appeals. Because VA is already committed to handling all claims as expeditiously as possible, this provision would have little substantive effect. Again, while we appreciate this provision's intent, we feel that this is an unnecessary legislative amendment.



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INTRODUCTION

Mr. Chairman and members of the subcommittee, Vietnam Veterans of America (VVA) appreciates the opportunity to present its views on legislation H.R.3269, introduced by Representative Lane Evans and draft legislation prepared by the subcommittee. This hearing represents yet another step in an ongoing process set in motion by the subcommittee to come to grips with ever-increasing problems in timely adjudication of claims and proper development of claims prior to adjudication.

While some would concede that decisions by the Court of Veterans Appeals (CVA) have hastened some of the problems in VA adjudications by increasing the backlog at the Board of Veterans Appeals (BVA), it is unclear the extent to which the backlog at the Regional Offices (RO) have been similarly affected. In this connection, we draw the subcommittee's attention to the June 4, 1993, report of the VA Inspector General (IG) (Timeliness of Benefits Claims Processing, Department of Veterans Affairs Regional Office, Pittsburgh, Pennsylvania, Report No. 3R6-B99-121).

Similarly, the extent to which backlogs exist in both the BVA and ROs is partially the measure of how long it takes the VA to adjudicate claims by following the same rules that have been on the books for years -- rules the VA had become proficient at ignoring in the absence of the court. The VA is also having trouble breaking the habit of ignoring its responsibility for fully developing claims prior to adjudicating them and ignoring due-process protections granted veterans under existing rules. This is much of the reason why so many cases are remanded from the BVA back to the ROs, and this accounts for much of the excessiveness of delay in the claims decision-making that is lately being blamed on judicial review by CVA.

Just as we have stated as emphatically as possible in each of the subcommittee's hearings on this topic this year, VA Regional Offices are prompted to churn claims rather than properly develop and adjudicate them. We are convinced this takes place because of work-credit incentives available to adjudicators who are rewarded for actions taken on submitted claims that often have little to do with full claims development or proper adjudication. The need to revamp management practices at the ROs is what prompted most of the veterans organizations to call for action in a letter sent last summer to the subcommittee chairman. This need for action is also what prompted the introduction of H.R.3269 by Representative Evans.

VETERANS ADJUDICATION PROCEDURES ACT OF 1993

Section 2 of H.R.3269 prohibits the availability of work credits to any RO employee engaged in adjudications until after a final decision on a claim has been made, and it defines the term "final" as that point when the veteran has exhausted the right to appeal to the BVA or has foregone this right by failing to file the appeal in a timely manner. This is needed because adjudicative personnel today are given incentives to process claims that effectively delay proper decisions.

As we discussed in our April 21, 1993, testimony before this subcommittee, work credits are available to RO personnel when a claim is denied prior to full development, when a statement of the case is prepared as a result of a veteran's substantive appeal of the premature denial, and among others, when a supplemental statement of the case is prepared as a result of a BVA remand for incomplete claim development. In essence, failure to get the claim fully prepared for adjudication prior to deciding on the merits of the claim is creating needless delay as well as adding to the backlog. It cannot be stated accurately that decisions by CVA

alone are responsible for delays and backlogs. Section 2 of the bill provides an incentive to the VA adjudicator to do the job correctly--the first time.

The VA Inspector General report on the Pittsburgh RO referred to above speaks volumes on the problems of claims churning. Even though the Pittsburgh RO is no model of efficiency within the system of Regional Offices, the practices found there are undoubtedly evident elsewhere. We draw this general conclusion because VA Central Office has inadequate mechanisms in place to validate performance information received from the field. Were it otherwise, the Compensation and Pension Service would have known of and corrected the problems found by the VA IG in Pittsburgh.

The VA IG report concludes that "Regional Office internal controls were not adequate to minimize claims-processing delays, Adjudication Division personnel did not process benefits claims in a timely manner, and many of the delays could have been avoided or reduced. Responsible personnel did not promptly request necessary evidence, did not follow up when evidence was not received timely, and did not adequately monitor pending claims. As a result of claims-processing delays, claimants may have experienced financial hardship.

"Adjudications Division personnel often recorded inaccurate data in the [Work in Progress] WIPP Subsystem. Pending claims were recorded as completed, claims were recorded as new issues when no new issues were involved, and types of claims were incorrectly recorded. In addition, dates of disposition were inaccurately recorded. These errors adversely affected management's ability to monitor claims processing." (emphasis added)

Under the circumstances, the proposal in this bill to ban work credit for churning claims seems modest. Indeed, the VA itself might agree and support this proposal if it had reliable methods of validating self-reported RO performance.

Section 3 of H.R.3269 contains an annual reporting requirement. As such, the VA would be mandated to provide Congress with specific information on the status of claims and the time it takes to adjudicate them throughout the claims process. This section of the bill is necessary for at least two clear reasons. The Congress needs accurate information on which to make policy decisions, and the VA Central Office needs reliable information from the field in order to better manage its claims process.

Sections 4 and 5 of the legislation authorize decision-making at the RO and at the BVA by single officials in circumstances where the same claims decisions-making is currently handled by a board or panel of officials. These provisions are designed to expedite decision-making by more efficiently using the already over-extended adjudications personnel. In order to assure the protection of veterans' rights however, these sections of the bill mandate that requests for hearings on RO denials or requests for reconsideration on BVA denials be honored by using adjudicative officials or panels excluding those having issued the original claims denial or original appellate denial. In this way, the possibility of bias entering into hearings at the RO or reconsiderations at the BVA is thoughtfully discouraged.

Section 6 of the bill codifies the effective date of decisions made at the RO or BVA to allow claims based on "clear and unmistakable error. When clear and unmistakable error is found, the effective date of the allowance is the same as the date of the prior mistaken decision. A request for review to determine the existence of clear and unmistakable error may be instituted by either the VA or the claimant at the RO or at the BVA at any time after a decision denying a claim is made. This provision is an important safeguard against adjudications that ignore or otherwise misinterpret the complete record on which the claim was based.

SUBCOMMITTEE DRAFT LEGISLATION

Mr. Chairman, we offer comment on the draft legislation supplied to us on November 5 by the subcommittee staff. We realize some changes may have been made in the draft since we received it, but time and scheduling limitations have made it impossible to delay preparation of this testimony beyond November 5. In the event substantive changes are made about which we may have some concern, we respectfully ask to be permitted to supplement the record within two weeks of the date of the hearing.

Section 2 of the draft bill eliminates the requirement for annual income questionnaires. This matter is one on which near-unanimous agreement had already been forged earlier this year among the veterans organizations, the VA and the members of the subcommittee, and as such, no further comment is necessary.

Section 3 of the bill would require a report on the feasibility of reorganizing adjudications divisions among ROs. While we are prepared to support efforts or plans the VA might undertake to make the work of adjudications more efficient, accurate and better organized, we have serious reservations to express about the license VA might take from the authority granted in this provision. The term reorganization is one that is without definition in the language of the legislation. We respectfully suggest adding language identifying the parameters and limitations intended by the term. Our concern here is that VA might seize upon an opportunity in fiscally difficult times to consolidate functions not to effect greater economies of scale but instead to simply shut down some Regional Offices.

Even absent an effort by VA to save resources by shutting down ROs irrespective of their need to stay open, recent history offers some guidance on what can go wrong even with well-intended reorganizations. Just a few years ago, home-loan guaranty functions in New England, for example, were consolidated. The reason was too little demand for loan-guaranty services at each RO in the region. At the time, however, property values were stable and the regional economy was booming. Today, things are much different in New England, with job losses stemming from deep recession driving many with VA loan guaranties into default and foreclosure. What made sense at the time these loan-guaranty functions were consolidated makes far less sense today.

Section 4 of the bill properly requires the VA Secretary to report within 90 days of enactment on the progress being made with the Department of Defense (DoD) in securing the immediate transfer to VA of medical records of all separating military personnel. This transfer of records makes sense in expediting claims for benefits by those veterans. Failing progress in securing cooperation from DoD, we urge legislation requiring DoD to comply.

Section 5 of the bill mandates the use of a single identification number for all individuals eligible for VA benefits or services. The use of this number by Regional Office or VA Medical Center employees would facilitate access to a complete profile of what benefits have been applied for and the status of these claims. Assuming adequate privacy protections are instituted, this new master record system should speed the delivery of benefits and services to veterans.

Yet another report is required in section 6 of the bill. This report requires the Secretary to describe any pilot programs or other major initiative being tested in ROs which affect claims adjudications. This section also requires the Secretary to identify any statutory changes required to implement pilot programs deemed desirable by the VA.

To the extent this provision will provide information to Congress on what is working to help in both quality and timeliness of claims adjudications, this provision is desirable. However, we would prefer to see additional language mandating the VA to undertake a fixed number of pilot programs in different regions of the country in order to ascertain any variables affecting claims adjudications.

Section 7 of the bill requires the VA to accept the written statements of claimants as proof of the existence of or dissolution of marriage, the birth of a child or death of a family member for benefits purposes, unless the statement raises doubt as to validity. This, too, should expedite decision-making in claims.

Section 8 of the bill requires the VA to accept physical examination by non-VA physicians for purposes of evaluating the compensable degree of disability for claims. This provision is most welcome since VA's current law on use of non-VA physician examinations delays claims adjudications significantly and unnecessarily.

Naturally, the use of non-VA physician exams for rating purposes must contain sufficient clinical data to satisfy VA claims-rating needs. In this connection, we suggest added language in the bill to foster a willingness by VA to make information available to non-VA physicians who request guidance on the particulars to be included in physical exams acceptable to VA.

The final section of this legislation requires expedited attention to claims remanded by the BVA to ROs for further development. While we are inclined to support this provision, we suggest additional legislation language to require expedited action on the claims of veterans in seriously ill health who may die prior to final adjudication of the claim.

Mr. Chairman, this concludes our statement.



NCOA

Non Commissioned Officers Association of the United States of America

225 N. Washington Street • Alexandria, Virginia 22314 • Telephone (703) 549-0311

STATEMENT OF

LARRY D. RHEA

DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS

BEFORE THE

*SUBCOMMITTEE ON COMPENSATION,
PENSION AND INSURANCE*

COMMITTEE ON VETERANS AFFAIRS

U. S. HOUSE OF REPRESENTATIVES

ON

*H.R. 3269,
THE VETERANS ADJUDICATION PROCEDURES ACT OF 1993
AND
RELATED DRAFT LEGISLATION*

NOVEMBER 17, 1993

Mr. Chairman and members of the Subcommittee, thank you for inviting the Non Commissioned Officers Association (NCOA) to appear and participate in this important hearing today. While much has been said and written about the problems and delays in VA claims adjudication, it is obvious that you, Mr. Chairman, and your fellow distinguished members, have dedicated yourselves to finding solutions to those problems. Today's hearing represents one more example of the dedication that the distinguished Chairman and members have displayed on this issue throughout the 1st Session of the 103rd Congress. Many NCOA members have experienced the frustrations associated with filing VA claims. NCOA members and all veterans will benefit greatly from the tireless efforts of this subcommittee. On behalf of all veterans everywhere, NCOA is deeply grateful for your sustained commitment to improving the adjudication and appeals processes.

Overall, NCOA is pleased with both Mr. Lane Evan's bill, H.R. 3269, and the Chairman's draft bill dated November 5, 1993. Many of the concerns and recommendations that NCOA has previously stated are incorporated in either one or both bills. The Association believes that today's discussion will permit the shaping of one piece of legislation that will substantially improve present procedures and thereby greatly benefit all veterans.

H.R.3269

VETERANS ADJUDICATION PROCEDURES ACT OF 1993

SEC. 1 SHORE TITLE; VETERANS ADJUDICATION PROCEDURES ACT OF 1993

SEC. 2 WORK RATE STANDARDS FOR ADJUDICATIVE EMPLOYEES

Section 2 proposes that adjudicative employees not be granted case work credit on a claim until the decision on the claim becomes final to include the appellate review by the Board of Veterans' Appeals (BVA) if the claimant so appeals. On the surface, this proposal appears to have merit if from no other standpoint than that of quality control. On closer examination however, the proposal has the potential to unfairly deny work credit to adjudicative employees deserving of such credit.

NCOA believes that a more reasonable approach would be to grant case credit on an original claim when the rating or denial decision has been completed. By so doing, an adjudicative employee would not receive multiple case credits for, in actuality, an original claim. By the same token, adjudicative employees would only receive case credit when all actions on the original case have been completed and the decision rendered. If the veteran files a Notice of Disagreement, another review is required that may or may not include new evidence. Nonetheless, a complete review of the case is again required and NCOA believes that adjudication employees should, as a matter of fairness, receive case credit in these instances.

SEC. 3. ANNUAL REPORT ON STATUS OF CLAIMS FOR BENEFITS.

NCOA carefully analyzed the rather detailed reporting requirement proposed in Section 3 and related that analysis with the ultimate goal of improving the timeliness of VA claims and decisions. Frankly, NCOA cannot make any connection between the proposed report toward the attainment of the final goal. Moreover, NCOA suggests that the historical data to be garnered by the proposed report is already available in the BVA annual statistical report. It is the Association's belief that the current BVA annual report is sufficiently detailed to identify problem areas and trends in the claims and appeals processes. Further, it is somewhat puzzling to the Association that implementation of Section 3 would be delayed three years if the information from the report is crucially important. Unless, the Secretary of Veterans Affairs favors Section 3 for reasons not readily apparent to this Association, NCOA recommends that Section 3 be deleted from the bill.

SEC. 4. OFFICIALS DETERMINING ORIGINAL AND REOPENED CLAIMS FOR BENEFITS

It was only recently that NCOA signed on to one-member BVA decisions. Encouraged by other recently considered improvements to the BVA process, NCOA reached that decision as being in

the timely interest of the veteran appellant. The Association cannot, however, endorse the proposal to allow determination on original and reopened claims to be made by a single rating official.

Many of the institutional problems associated with claims processing stem from the decisions reached at VA Regional Offices (RO). The primary factor underlying these problems is the lack of technical knowledge and experience of rating officials at the RO's. It is not the Association's intent to be overly harsh or judgmental regarding rating officials. But, it is widely acknowledged that much of that which is attempting to be improved upon today stems from the decisions of RO rating officials.

In attempting to improve the claims process, both the timeliness and quality of decisions, it seems to this Association that every effort should be made to ensure that the initial determination on all original and reopened claims is, in fact, the correct decision insofar as is humanly possible. NCOA is gravely concerned that permitting single rating official determinations will exacerbate the very problems that the subcommittee is attempting to fix. Therefore, the Association urges the subcommittee to very carefully consider the potential additional consequences of a single rating official system.

SEC. 5. BOARD OF VETERANS' APPEALS PROCEDURES

As indicated in the Associations preliminary comments on Section 4, NCOA supports single-member BVA decisions as being in the best interest of both the VA and the individual veteran appellant. Similarly, the Association supports the change to allow the Board on its own motion to reconsider a case because of an obvious error. The Association endorses Section 5 in its entirety.

SEC. 6. REVISION OF DECISIONS BASED ON CLEAR AND UNMISTAKABLE ERROR.

NCOA strongly supports Section 6. The Association is particularly appreciative of the language

in this section that authorizes compensatory awards and benefits retroactively to the date of the erroneous prior decision. This clearly is the right thing to do when decisions are revised or reversed based on clear and unmistakable error.

CHAIRMAN SLATTERY'S DRAFT LEGISLATIVE PROPOSAL

SEC. 1. VETERANS ADJUDICATION IMPROVEMENTS ACT OF 1993

SEC. 2. ELIMINATION OF REQUIREMENT FOR ANNUAL INCOME QUESTIONNAIRES.

NCOA supports this change that would eliminate the requirement for the VA to send Income Eligibility Verification Reports to every pension recipient. The VA already has the capability to accomplish income verification via computer exchange with both the Internal Revenue Service and the Social Security Administration.

SEC. 3. REPORT ON FEASIBILITY OF REORGANIZATION OF ADJUDICATION DIVISIONS IN VBA REGIONAL OFFICES.

NCOA strongly supports this recommendation and believes that 180 days is reasonable for the Secretary of Veterans Affairs to meet the requirement.

SEC. 4. TRANSFER OF MILITARY SERVICE MEDICAL RECORDS.

NCOA strongly supports the measure proposed in Section 4 to enhance the immediate transfer of service medical records from the Department of Defense to the Department of Veterans Affairs upon the separation of members of the Armed Forces from active duty. Many of the delays associated with initial claims processing can be attributed to medical records not being available.

NCOA views Section 4 as a very positive initiative. NCOA does, however, recommend that the subcommittee more strongly reinforce Section 107 by directing the Secretaries of Defense and Veterans Affairs to enter an agreement on this issue within a stated time frame but no longer than 180 days following enactment of the legislation.

SEC. 5. MASTER VETERAN RECORD.

NCOA enthusiastically endorses Section 5 that requires the VA to develop a record keeping system to identify each claimant by a single identification number. Section 5 makes eminent good sense and, in the judgement of this Association, the claimant's social security number is the logical identifier to replace the current VA claim number. The military services adopted the social security number as the single identification number nearly thirty years ago. The social security number is also the identifier used in the cross-checking referred to in Section 2.

SEC. 6. REPORT ON PILOT PROGRAMS.

NCOA supports the report requirement in Section 6 as a reasonable means for the subcommittee to exercise oversight responsibilities, particularly in regard to the reorganization of the RO adjudication divisions referred to in Section 3.

SEC. 7. STATEMENTS TO BE ACCEPTED AS PROOF OF RELATIONSHIPS.

NCOA supports this section with the belief that it will contribute to more timely processing of claims. Clearly though, the Secretary must retain the authority to require additional documentation when the validity of any statement is questionable.

SEC 8. ACCEPTANCE OF PRIVATE PHYSICIAN EXAMINATIONS.

The Association supports the acceptance of private physician examinations, properly supported with sufficient clinical data, without confirmation of such examinations by VA physicians.

NCOA believes that Section 8 will contribute substantially to expediting claims processing and reduce workload. In endorsing Section 8, it is the Association's understanding that VA would retain the authority to confirm with VA physicians any private physician examinations deemed necessary by the VA.

SEC 9. EXPEDITED TREATMENT OF REMANDED CLAIMS.

NCOA strongly concurs with Section 8 to provide expedient treatment of claims remanded by the Board of Veterans' Appeals.

CONCLUSION

In conclusion, NCOA views both bills as very positive initiatives to improve VA claims adjudication procedures. In the few instances where NCOA has stated concern regarding a proposed course of action, such comments are intended to be constructive to the mutual goal of improving the timeliness of VA claims and the quality of decisions.

Finally, the Association wants to restate its sincere appreciation to the distinguished Chairman and members for your diligence and genuine concern for veterans.

Thank you.



STATEMENT OF
 RUSSELL W. MANK, NATIONAL LEGISLATIVE DIRECTOR
 PARALYZED VETERANS OF AMERICA
 BEFORE THE
 SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
 OF THE
 HOUSE COMMITTEE ON VETERANS' AFFAIRS
 CONCERNING THE VETERANS ADJUDICATION
 PROCEDURES ACT OF 1993
 November 17, 1993

Mr. Chairman and Members of the Subcommittee, Paralyzed Veterans of America (PVA) appreciates this opportunity to express our views on H.R. 3269 to make improvements in the procedures used by the Department of Veterans Affairs (VA) in adjudicating claims for veterans' benefits, and for other purposes, as well as a second draft bill on the same subject.

Mr. Chairman, in May 1993, PVA and other veterans' service organizations submitted a joint letter to the members of this Committee recommending a series of actions to improve VA's adjudication procedures. In addition to the joint letter, PVA on May 24, 1993, submitted a lengthy list of recommendations in a letter to this Committee. Most of the provisions in proposed H. R. 3269 incorporate the recommendations of the veterans' service organizations. We wish to express our appreciation for the Committee's responsiveness in addressing these pressing matters. Section 2 of H.R. 3269 pertains to work rate standards for VA adjudicative employees. PVA and other service organizations asked that VA change its work management standards. PVA said that VA must revise Regional Office and BVA work measurement standards to give credit only for "final" decisions. PVA's support for the recommendation was based on the belief that this would serve as a means to reward and reinforce complete, correct claims adjudication. A claim processed correctly the first time takes far less time to adjudicate than a claim subject to remands from the Board and the Court of Veterans Appeals to correct deficiencies.

The adoption of improved work rate standards need not be by legislation. PVA believes that these standards should remain an internal management tool to determine productivity. Industry has adopted a number of work management measures over the years. VA's Blue Ribbon Panel on Claims Processing made recommendations for changes in the adjudication system. It is recommended that requirements as to the procedures for measuring the effectiveness of these changes await the implementation of the Panel's recommendations.

Section 3 would provide for an annual report on the status of claims for benefits. It is the impression of PVA that this

information is already available to the Committee. If it is not, it would appear a relatively simple matter to request that the Secretary provide the information in the format desired without need for additional legislation.

Section 4 would permit the use of single member rating determinations of VA benefits. PVA in the past opposed the idea of single member rating "boards." Our opposition continues. Losses in quality brought about by the proposed change could occur. We do not believe that any significant increase in "efficiency" will occur.

The change to a one-member "board" would bring about a fundamental change in the entire nature of the VA's initial decision-making process. Most VA claims involve questions of a medical nature. Claimants would lose the opportunity to have their cases reviewed by a physician. The veteran will thus lose the medical expertise desirable in resolving the claim. Also, the physician would not be available to make observations at hearings.

PVA does not believe that the change to one member rating decisions will increase significantly the efficiency of VA. VA now estimates that efficiency will increase only by 10% with the change from three to one member rating boards. We are not sure how this figure was determined. We have reservations as to the effect of this change on the quality of decision making.

It is our understanding that the use of single raters is being tested currently in the Cleveland, Ohio, and the Detroit, Michigan, Regional Offices. The tests are scheduled to be completed in approximately six months. PVA recommends that further consideration of this Section be deferred pending the results of VA's study. We will continue to oppose this reduction until we are satisfied that the efficiencies achieved are not made by the sacrifice of quality.

Section 4 of the bill would also amend Section 5109 of the existing law. The existing Section 5109 pertains to independent medical expert opinions. Perhaps Section 5104, titled "Decisions and Notices of Decisions," would be a better location for the proposed legislation.

Section 4 further permits hearing officers to make determinations without referring the case back to the rating official who made the initial determination. PVA supports this concept. In describing the powers of the hearing officer, however, it is essential that none of a claimant's procedural rights be infringed upon. We believe that a technical review of this section should be undertaken to assure that cases decided by the hearing officer are treated no differently than other cases.

Section 5 of H.R. 3269 would permit Board of Veterans' Appeals decisions to be made by one individual. PVA has no objection to the use of one member decisions when the Board's decision is either to remand the case to the Agency of Original Jurisdiction for further adjudication or one in which benefits are fully allowed. PVA continues to support retention of three member panels at the Board of Veterans' Appeals in cases which are denied.

Section 5 would also provide for three member reconsideration panels. PVA has no objection to the use of three member reconsideration panel cases provided none of the original members are on the reconsideration panel. PVA is adamantly opposed to granting the Chairman of the Board of Veterans' Appeals membership on the Board.

PVA has no objection to the restoration of the "obvious error" standard of review in reconsideration cases contained in Section 5. PVA, however, objects to limiting motions for reconsideration to this single reason. There are other valid reasons in which such a

motion should be granted. For example, motions for reconsideration should include cases where the evidence at the time of the BVA decision was in equipoise and the benefit of the doubt was not resolved in the claimant's favor.

Section 6 provides for revision of Regional Office and BVA decisions based on clear and unmistakable error. This is essentially a codification of Title 38 of the Code of Federal Regulations, Section 3.105(a). PVA supports the codification of this regulation because it clarifies the jurisdiction of the Court of Veterans Appeals to hear cases in which the notice of disagreement of the BVA decision was prior to November 18, 1988. We are concerned that the absence of a Regional Office decision and, thus, the absence of a "notice of disagreement" might cause the Court to decline jurisdiction of Board cases in those instances where there is no post-November 18, 1988 notice of disagreement of record. We, therefore, recommend that a technical review of this section be undertaken to assure that the language of the section carries out the intention of the authors.

The second draft bill "to make improvements in the VA adjudication process" draws heavily from the VA Blue Ribbon Panel on Claims Processing. Each one of the bill's provisions could be accomplished now without legislative intervention. We believe that the same is true of Sections 2, 3, and 4 of H.R. 3269. PVA supports the administrative initiatives contained in the bill.

The Blue Ribbon Panel recommendations now await action by the Secretary. PVA believes that the Secretary should be accorded a reasonable period of time to implement the proposals he selects. PVA respectfully suggests that at the end of that period that this Committee through its oversight powers call the Secretary to report on his progress. If the Secretary's response is unsatisfactory, then the proposed legislation should be reintroduced.

PVA is of the opinion that June 30, 1994 is an appropriate date to call the Secretary to account for the progress made in reforming the adjudication procedures. This date would permit you to act, if necessary, during this Congress if the Secretary has not fulfilled his administrative duties.

Mr. Chairman, that concludes my testimony. I would be glad to answer any questions.

STATEMENT OF

BOB MANHAN, ASSISTANT DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

**LEGISLATIVE HEARING REGARDING IMPROVEMENTS IN THE ADJUDICATION
CLAIMS PROCEDURES**

WASHINGTON, DC

NOVEMBER 17, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for inviting the Veterans of Foreign Wars of the United States (VFW) to participate in this very important hearing this morning. It is my professional and personal pleasure to present my organization's views on this subject. The great majority of our 2.2 million members have been or are presently involved in the claims process at either the regional office (RO) level, the Board of Veterans Appeals (BVA) or in a very few instances, at the Court of Veterans Appeals (CVA) level.

Generally speaking, the VFW sees positive features in both Mr. Lane Evans's bill H.R. 3269 and the chairman's own discussion draft bill dated November 5, 1993. Therefore, this presentation will comment on every section of both bills. We believe this procedure will make it easier to combine both bills into one piece of proposed legislation that will be more inclusive than either one at the present time.

H.R. 3269:

SEC. 1. SHORT TITLE "VETERANS ADJUDICATION PROCEDURE ACT OF 1993,"

SEC. 2. WORK RATE STANDARDS FOR ADJUDICATIVE EMPLOYEES. This section addresses certain adjudication employees at the RO level.

Generally speaking, the VFW disagrees with the concept that case credit not be given until the claimant has exhausted, or failed to timely exercise, the right to appellate review by BVA.

VFW believes it is more logical to grant case credit when all actions have been completed on the claim, resulting in the rating decision. Our supporting rationale for this position is that if the claimant files a Notice of Disagreement -- which can be as long as one year after receiving rating decision notification -- it will require another review of the case which may or may not include new evidence. Further appellate review could involve many months, indeed years, before finality is achieved and we feel it is inherently unfair to adjudication personnel not to receive credit for an action on which they have completely fulfilled their responsibilities.

SEC. 3. ANNUAL REPORT ON STATUS OF CLAIMS FOR BENEFITS. This section focuses exclusively on the VA's annual reporting requirements. We note four of the 13 pages of this bill are devoted exclusively to this extremely detailed reporting requirement.

Generally speaking, the VFW does not support this elaborate formatting of historical data simply because we do not believe it does anything to improve either the timeliness of decisions or the quality of decisions rendered. Our supporting rationale is that the present annual statistical reports provide enough meaningful information for all interested parties to identify bottlenecks or problem areas and make it easier to predict some long-range trends in the appeals process. To require this detailed reporting will also most likely necessitate the needless diversion of presently scarce manpower resources to act as full-time "auditors".

SEC. 4. OFFICIALS DETERMINING ORIGINAL AND REOPENED CLAIMS FOR BENEFITS. The overall thrust of this proposal is to allow RO adjudication personnel to render a "one person" decision. While the VFW strongly supports the single panel/person decision at BVA, we have serious reservations about presently implementing such a system here because of questions concerning quality control and due process protection. It seems logical to assume there is going to be an increase of requests for personal hearings from veterans who will be uncomfortable relying on a single-person decision. This could overwhelm the present system leading to substantial timeliness problems in both conducting hearings and rendering decisions by the hearing officers.

The other option would be to institute a review for a single-person decision by a three-member Board. This constitutes another review stage in the current system, which will provide another level of due process at the RO. The result is an obvious increase in the timeliness factor.

SEC. 5. BOARD OF VETERANS' APPEALS PROCEDURES. The VFW agrees with this section. Specifically, we support the concept of a single member decision as offered in the bill's proposed change to section 7102 of title 38, USC. See a copy of our 1993 resolution number 602 entitled "Approve One-Member Decisions At The Board Of Veterans Appeals" which is attached to this statement.

SEC. 6. REVISION OF DECISIONS BASED ON CLEAR AND UNMISTAKABLE ERROR. Again, the VFW supports this entire section. We view this as an extension of the previously mentioned reconsideration motion to correct obvious VA errors/decisions. In all instances of allowances of previously denied claims we agree that compensation should be paid retroactively to the date of the initial claim rather than at the later date of when the error was discovered or corrected.

The following comments address the discussion draft which has a similar **SEC. 1. SHORT TITLE** "Veterans' Adjudication Improvement Act of 1993" to H.R. 3269.

SEC. 2. ELIMINATION OF REQUIREMENT FOR ANNUAL INCOME QUESTIONNAIRES. The VFW thinks this is an excellent idea. The VA has, or will shortly expand, the capability and operating procedures to cross-check any claim with either or both the Internal Revenue Service and the Social Security Administration.

SEC. 3. REPORT ON FEASIBILITY OF REORGANIZATION OF ADJUDICATION DIVISIONS IN VBA REGIONAL OFFICES. The VFW strongly supports this recommended course of action. We believe the Secretary of Veterans Affairs can meet the 180 day requirement cited in this section. Restructuring the current adjudication divisions and rating boards into an activity where team "ownership" and accountability of claims are stressed may well be the most significant and positive change towards decreasing the claims processing backlog.

SEC. 4. TRANSFER OF MILITARY SERVICE MEDICAL RECORDS. Again, the VFW strongly supports this proposal to have all the military services immediately transfer active duty service medical records to VA. The Army is already doing this and former soldiers are more quickly able to file initial compensation claims. The VFW believes this same expedited

procedure should be available to all former service members and it is an action that will help make a significant reduction in original claims processing timeliness.

SEC. 5. MASTER VETERAN RECORD. The VFW agrees that VA should develop a recordkeeping system to identify each claimant by a single identification number. In our opinion the use of a social security number is the one to replace the current VA claim number. This is the number used by all active duty personnel and of course is the identifier used in any cross-referencing we cited in the discussion of section 2, above.

SEC. 6. REPORT ON PILOT PROGRAMS. The VFW supports this reporting requirement. We consider this part of the previously discussed section 3 to reorganize the adjudication divisions in the 58 regional offices with the objective of improving both the timeliness and the accuracy of claims processing.

SEC. 7. STATEMENTS TO BE ACCEPTED AS PROOF OF RELATIONSHIPS. The VFW certainly supports this concept of providing other than original or certified copies of documents that are necessary to support an initial claim. However, we suggest inserting before the words "... the written statement of a claimant ..." cited on line 18, page 4 of the draft bill, the following: "... photocopies of documents or" and before the word "documentation" on lines 20-21 the word "certified".

The VFW firmly believes in most cases this will reduce the requirement for VA to ask for the submission of unneeded certified documentation which now causes the veteran much delay in obtaining.

SEC. 8. ACCEPTANCE OF PRIVATE PHYSICIANS EXAMINATIONS. Again, the VFW agrees in principal with this concept. However, we strongly suggest that the phrase "... on an original claim for benefits ..." be added to line 7, page 5 of the bill in place of the words "... in support of a claim"

This suggestion has the advantage of allowing VA to use its own doctors for medical evaluation at some later date or in those instances when a medical condition has unexpectedly and quickly deteriorated.

SEC. 9. EXPEDITED TREATMENT OF REMANDED CLAIMS. The VFW concurs. To ensure that this concept is all-encompassing we recommend the words "... Court of Veterans Appeals or ..." be added to line 19, page 5 after the word "by" and before the words "... the Board of Veterans Appeals"

In conclusion, the VFW believes both bills have offered some positive actions that will assist the entire veteran/dependents community in their pursuit of seeking a pension and/or compensation entitlement. I am prepared to answer any questions you or members of your subcommittee may have, Mr. Chairman. This concludes the VFW's written statement. Thank you.



S
SERVING
WITH
PRIDE



STATEMENT OF
EARNEST E. HOWELL
AMVETS NATIONAL LEGISLATIVE ASSISTANT

Before the
SUBCOMMITTEE ON
COMPENSATION, PENSION & INSURANCE
of the
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

On
LEGISLATION
TO IMPROVE PROCEDURES
USED BY VA
IN ADJUDICATION OF CLAIMS
FOR VETERANS BENEFITS

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Wednesday, November 17, 1992
Cannon House Office Building, Room 334

Good morning. Mr. Chairman, AMVETS is grateful for being invited here today, and we are pleased to present our analytical comments on legislation which proposes to make improvements in the procedures used by the Department of Veterans' Affairs (VA) in the adjudication of veterans' claims for benefits. Our testimony today will encompass both H.R. 3269, the Veterans Adjudication Procedures Act of 1993, introduced by committee member Congressman Lane; and your draft legislation, entitled the Veterans' Adjudication Improvements Act of 1993. As a whole, AMVETS supports the substance of both bills, and we are optimistic that, when enacted, both will improve VA adjudication. We will begin with an assessment of H.R. 3269.

A common complaint of veterans and their representatives is the perception that the entire chain of VA claims development, rating and adjudication tends to treat a veteran's claim folder like a hot potato. The perception is: "the sooner I can get this folder off my desk, the better." While this perception is not universally true, it suggests a policy where pushing the claim on down the line is the driving force. The tie between productivity and VA employee promotions is at the expense of both quality and quantity of claims being processed. Many a remand could have been prevented had the claim been properly developed at the regional office (RO) in the first place.

Changing VA employee work rate standards so that credit for work is dependent on a final decision on a claim will have several effects. "Top-sheet adjudication" will become less of a temptation. This, coupled with the team approach to claims processing, will encourage more attention to quality and less on quantity of work performed. However, in fairness to its employees, VA management will be forced to adjust productivity standards to adequately reflect this holistic approach. In the long run, AMVETS is optimistic that the effects of a substantial decrease in the high pressure "assembly line" handling of claims will be beneficial to both VA employees and the veterans they serve.

Equally important, a team environment would focus on a more cooperative effort to process claims. The members of the team would be motivated to double-check each other, since the productivity code would be assigned to the group as a whole, not to each individual. And, since work credit would be dependent on a final decision on the claim, the team members would concentrate on fully developing, rating and adjudicating the claim to prevent prolonging the decision. While this method would not eliminate remands entirely, it would certainly decrease their likelihood.

To make the team concept viable, VA regional office directors must be given the authority of their private industry counterparts to rid the system of career employees whose performance is substandard. The same should apply to directors of VA's medical facilities. As it now stands, those VA employees who do not do their jobs have little to worry about. At the very worst, they might be transferred--and often promoted in the process--to another VA office or to another government agency. You can't solve problems by passing the buck. Local area VA managers desperately need at least some degree of autonomy for the entire system to function consistently and efficiently.

The lack of priority handling of remands is another contentious concern of veterans and service organizations. Too often claims remanded back to regional offices are merely stacked on the heap with new or pending initial claims, frequently with no special consideration. This is not fair to the veterans who must wait needlessly while their claims are unjustly being forced back into the processing loop.

AMVETS supports the provision in Congressman Evans' bill that would require the VA Secretary to submit an annual report to Congress. It's about time the administration, Congress and veterans service organizations began working with real numbers. With accurate and reliable information on VA's ability to deliver its many services to veterans, it will be possible to determine the real value of the VA dollar. Hard data on VA's performance will enable more precise analysis of both progresses and shortfalls and meaningful criteria on which to base VA appropriations. With this data VA can begin to geographically adjust personnel assets to accommodate the shifts in the veteran population. With accurate information on claims processing, critical nodes in the system can be more easily identified and appropriate corrective measures taken. Having a reliable yardstick to measure timeliness will enable VA to more accurately set realistic work standards.

AMVETS supports decisions on veterans' original or reopened claims rendered by a single rating official instead of a rating board. Our support, however, is contingent upon all decisions by individual rating officials being subject to review by the chairman. Further, we concur with the H.R. 3269 provision requiring the official conducting a hearing subsequent to a denial of benefits to render a decision without referring the case back to the rating official who initially decided the case. Leaving such decisions open to review will ensure the integrity of the rating officials and significantly lessen the perception of bias.

As you may recall, AMVETS recently testified to our support of single Board of Veterans' Appeals (BVA) member decisions. In consonance with the preceding paragraph, AMVETS feels it absolutely necessary that BVA decisions also should be open to review by the chairman. It is our view that individual autonomy has no place in any form at any level of VA.

Concerning BVA reconsideration, AMVETS believes Mr. Evans' proposal represents a positive step that would be in the best interest of veterans. We particularly appreciate the exclusion of the board rendering an initial denial from the section performing a reconsideration of that decision. However, we feel that the language of the proposal should mandate exclusion of such a board member from reconsideration of cases previously denied by that member.

Correction of obvious errors in veterans' claims, as far as AMVETS is concerned, is the very core of VA's delivery of services to veterans. Gross irregularities and inconsistencies found during the course of processing a claim should--indeed, must--be considered fundamental to VA's duty to assist the veteran. It should be understood in VA--by everyone from the administrative clerk all the way up to the BVA chairman--that anywhere and any time a mistake is encountered, it must be corrected. Obvious errors must trigger prompt corrective action. It only makes sense to correct mistakes no matter when, where or who discovers them.

AMVETS wholeheartedly supports the proposed codification of regulations that would protect a veteran's original claim date on VA decisions reversed due to clear and unmistakable error. It is unfortunate that a law must be enacted to force VA to abide by its own rules. It is just as disturbing that duly earned veterans benefits would be curtailed on the premise that it would save the government money. Establishing 38 CFR Chapter 1 §3.105(a) in law would discourage attempts to erode the full extent of benefits earned by and owed to America's veterans.

Mr. Chairman, we have reviewed your draft bill, the Veterans' Adjudication Improvements Act of 1993. It identified a number of serious problems in VA adjudication and straight-forward solutions to them.

Veteran pensioners and VA employees alike will tell you that the submission of annual eligibility verification reports (EVR) is one of their most frustrating experiences. For those veterans on fixed incomes with virtually no chance of ever increasing, the yearly ritual seems quite useless. Indeed, in many cases annual EVRs are unnecessary. This is especially true since VA

now has access to pertinent income verification data from both the Social Security Administration and the Internal Revenue Service.

Allowing VA pensioners to notify the Secretary only in the event of changes in their eligibility is a win-win situation. The current procedures of VA pension administration are cumbersome to say the least. While a veteran may have an established lifetime guarantee of pension, it must be "renewed" via an EVR to remain in force. Far too much precious VA time is spent reactivating pensions automatically shut off for lack of annual EVRs. With this provision, those pensioners whose income is not expected to change will no longer have to deal with the threat of termination should an EVR not reach VA on time, and VA pension administrators will realize a substantial reduction in routine account maintenance.

Finding ways to reduce the mountainous case backlog within the Veterans' Benefits Administration (VBA) is an arduous task. As we know, the 700,000-case backlog is not evenly distributed through VA's regional offices. We also must realize that the 350-day average claims processing time is just that, an average. In fact, how can we be absolutely sure about these figures, when no real measurement mechanism exists in VA? We do know that some ROs are farther behind the claims processing curve than others. Reorganization of RO adjudication divisions will allow local directors to adjust their personnel strengths according to workload requirements; to beef up or pare down as needed.

Reorganization of adjudication divisions is viewed by some as a move toward regionalization. AMVETS is very wary of regionalizing a VA function that benefits from a veteran's ability to receive personal attention at the intake point. Any changes to the system must retain that local access.

It is difficult to understand how closing ROs in favor of centralized control of claims processing will serve VA employees or beneficiaries, or how such a strategy would help to eliminate the backlog. To the contrary, combining the pending cases from several ROs into a central warehouse would create an even greater, combined caseload without adding additional VA personnel to handle it. Furthermore, many of those seeking benefits would be forced to travel much greater distances to make contact with the VA system. Therefore, while we are doubtful of any benefit to be gained through regionalization of adjudication, we are willing to keep an open mind and we do not oppose the report provision because it may shed new light on ways in

which adjudication might be regionalized and, at the same time, customer service and outreach improved.

Obtaining military medical records is often a very time-consuming aspect of initial VA claims processing. While VA does accept personal copies of service medical records as a basis to initiate a claim, law requires VA to acquire certified original copies as evidence to be evaluated for VA disability. The service personnel and medical records of veterans, unless otherwise specifically requested by the veteran, end up in the repository in St. Louis, Missouri, a place that does nothing more than file them away.

AMVETS fully supports the direct transfer upon separation of all military medical records from the Department of Defense to VA. Such an arrangement will serve a number of purposes. It will eliminate the need for the veteran to authorize and VA to send out for service medical records to process a disability claim because they will already be on hand; it will enable VA to input basic veterans identification into VA's computer banks, thus cutting down on the time and administrative data processing required to set up a veteran's initial claim; and AMVETS is hopeful that the physical transfer of service medical records from DoD to VA will carry over into the advances evolving in data transfer technology, thus simplifying and speeding up the process and eliminating the associated physical storage requirements.

A master veteran record system using a standardized method of identification would provide a rapidly accessible, concise snapshot of a VA beneficiary. Differences in the way the various VA benefits and services providers identify their beneficiaries often complicates cross-referencing and research within the overall system. Another factor that often makes VA tracking difficult is the fact that virtually every major benefits program area maintains its own separate file on a given VA beneficiary. Without direct interaction among the various VA divisions, it would be extremely difficult today to put together a single, complete benefits/entitlements picture on a veteran, dependent or survivor. Once a master veteran identification and benefits system were implemented, a VA benefits division anywhere could input information to create and/or update a veteran's file which would be available to every authorized VA employee with on-line access to the system for access and information. AMVETS welcomes this as yet another innovative step toward moving away from hardcopy claim file management. We are eager to see this become a VBA standard operating procedure.

The importance of reporting results of pilot programs in VA cannot be over-emphasized. The good that comes out of such test cases is not always given the kind of dissemination that would make system-wide incorporation possible. Likewise, Congress needs to be kept up to date on VA initiatives should the need arise to pull the plug on a good idea that didn't pan out. Once enacted, this provision would hold the VA secretary accountable to share lessons learned for the common good.

It is frequently quite inconvenient, at times quite difficult, for veterans submitting claims for VA benefits to produce certified documentation in support of those claims. Veterans also complain that documents routinely requested are not pertinent to the benefit sought. It will greatly reduce initial claims processing in the early phases of development to accept the veteran's word about marital status, dependents, etc. Taking a veteran's statement in lieu of official documents would allow for more expeditious processing of claims and significantly reduce the time required to render decisions. AMVETS is in complete agreement with this provision.

Many times VA examinations are scheduled when valid medical evidence already exists in support of a claim for VA disability. Eliminating the practice of automatically scheduling VA medical evaluations would permit more rapid adjudication of VA disability claims and reduce the burden on VA doctors. Again, AMVETS see this as a means of reducing VA adjudication delays, freeing up VA medical resources and shortening the time a veterans must endure for a decision on VA disability claims.

Mr. Chairman, the final section of your draft bill deals with expedited treatment of remanded claims. VA is struggling to overcome a 700,000-case backlog. Many of these claims are remands from BVA for further development or other appropriate action. The veteran or other VA beneficiary with a remanded claim has no real guarantee that his or her claim will be treated any differently than any other initial claim at the RO.

It is difficult to explain to veterans in this situation that their remands do not merit any special priority and thus are thrown back into the time loop with claims undergoing initial development and adjudication. Service officers contend with this reality on a daily basis. It is a reality that is unfair to veterans who sense that they are being needlessly put off and that their claims are being arbitrarily recycled. AMVETS considers this proposal to be in keeping with acting in the best interests of VA beneficiaries.

We recommend two possible methods that could be employed by RO directors to keep remands out of the routine mainstream. The first method would entail establishing a first-in, first-out priority for remands, whereby remands would be given first priority of action at the RO upon receipt. The second method would involve RO directors setting up special adjudication teams to concentrate solely on remands. Once the remand workload were eliminated, these teams would revert to handling initial claims. Either of these methods would accomplish the intent of the proposed legislation.

In summary, Mr. Chairman, AMVETS is quite pleased to see the subcommittee's continued dedication to helping VA overcome the effects of increasing workload and decreasing appropriations. We look forward to working with you and the full committee on what we see as major improvements in the VA adjudication process. Thank you again for allowing AMVETS to share our views on this important veterans issue. Mr. Chairman, this concludes my statement.

TESTIMONY OF THE
AMERICAN EX-PRISONERS OF WAR

ON

H.R. 3269 AND A DRAFT BILL
TO MAKE IMPROVEMENTS IN THE
DVA ADJUDICATION PROCESS

BY

CHARLES A. STENGER, PhD, NATIONAL CONSULTANT

ACCOMPANIED BY

WILLIAM E. BEARISTO, NATIONAL COMMANDER

CHARLES M. WILLIAMS, EXECUTIVE DIRECTOR

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
HOUSE VETERANS AFFAIRS COMMITTEE

WASHINGTON, DC

NOVEMBER 17, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE: THE AMERICAN EX-PRISONERS OF WAR ARE PLEASED TO APPEAR BEFORE YOU TODAY. WE APPLAUD THE DETERMINATION OF THE COMMITTEE TO FOCUS ON A PROBLEM THAT HAS FOR TOO LONG PREVENTED THOUSANDS OF VETERANS FROM RECEIVING FAIR AND EQUITABLE RESOLUTION OF THEIR CLAIMS AND APPEALS.

AS A RESULT OF LONGSTANDING POLICIES AND PROCEDURES, IT IS NO OVERSTATEMENT TO SAY THAT DVA FUNCTIONS AS AN ADVERSARY OF THE VETERAN, NOT THE ADVOCATE CONGRESS AND OUR NATION INTENDED.

AS A RESULT OF THESE LONGSTANDING POLICIES AND PROCEDURES, VETERANS, WHO FAITHFULLY SERVED AND SACRIFICED FOR THEIR COUNTRY, ARE ALL TOO FREQUENTLY CONFRONTED BY DVA ADJUDICATORS WHO PRE-JUDGE THEM; WHO APPROACH THE CASE WITH BIAS; WHO REVIEW THE RECORD IN A SUPERFICIAL, INCOMPLETE MANNER; AND WHO ALL TOO FREQUENTLY IMPROPERLY FOCUS ON REASONS TO DENY! VETERANS SIMPLY DO NOT GET THE SENSITIVE, THOROUGH AND BALANCED CONSIDERATION DVA IS OBLIGATED BY LAW TO PROVIDE!

THESE ARE HARSH STATEMENTS BUT THEY ARE TRUE! THEY ARE VALIDATED DAILY BY SERVICE REPRESENTATIVES IN ALL PARTS OF THE COUNTRY. THERE ARE, OF COURSE, VARS THAT DO FULFILL THEIR OBLIGATION --- THAT DO FULFILL THE ADVOCACY ROLE -- BUT THEY ARE MOST CERTAINLY IN THE MINORITY.

MR. CHAIRMAN, WE KNOW DVA DID NOT INTEND TO FAIL IN THIS RESPONSIBILITY. WE ALSO KNOW THAT, AT LEAST UP TO THE PRESENT, DVA OFFICIALS RESPONSIBLE FOR ADJUDICATION SERVICES HAVE SIMPLY NOT RECOGNIZED THE DEGREE TO WHICH THIS FUNCTION HAS FAILED THE VETERAN. INDEED, IN THE PAST THEY HAVE REPEATEDLY TESTIFIED THAT THE SYSTEM IS WORKING FAIRLY FOR ALL VETERANS, INCLUDING EX-PRISONERS OF WAR AND COMBAT VETERANS.

THEY APPEAR TO HAVE BLINDERS ON. THEY ARE TOO CLOSE TO THE SITUATION TO JUDGE IT OBJECTIVELY. AT BEST, THEY TELL THEMSELVES THAT DEFICIENCIES EXIST -- THAT OCCASIONAL MISTAKES OCCUR

-- BUT ARE DUE TO OVERWORKED, UNDERSTAFFED PERSONNEL AND THAT THROWING MORE PEOPLE AND MORE DOLLARS AT THE PROBLEM WILL SOLVE EVERYTHING. WHAT THEY DON'T APPEAR TO GRASP IS THAT THERE IS A FUNDAMENTAL DEFICIENCY AND IT HAS PERMEATED CO PROGRAM OFFICIALS, VARO SUPERVISORS AND THE FIELD ADJUDICATORS ALIKE.

THAT DEFICIENCY, PURE AND SIMPLE, IS THAT DVA DOES NOT APPROACH ITS ADJUDICATION ROLE AS AN ADVOCATE OF THE VETERAN! THIS DOES NOT MEAN THAT EVERY CLAIM IS JUSTIFIED, FOR MANY ARE NOT. BUT INSTITUTIONALIZED, NON-VERBALIZED PRACTICES OPERATE TO SEEK REASONS TO DENY CLAIMS RATHER THAN TO ALLOW THEM. THE THOUSANDS OF APPEALS, REMANDS AND PETITIONS TO THE U.S. COURT OF VETERANS APPEALS -- ALL DOCUMENT THAT A SENSITIVE, THOROUGH AND BALANCED ASSESSMENT OF CLAIMS IN A SPIRIT OF ADVOCACY SIMPLY DOES NOT EXIST. IN FACT, IN PRACTICE, THE OPPOSITE EXISTS AT ALL LEVELS OF CLAIMS AND APPEALS.

WE UNDERSTAND AND SUPPORT THE FACT THAT, EVEN WHEN THE JOB HAS BEEN DONE RIGHT, NOT ALL CLAIMS WILL OR SHOULD BE ALLOWED. BUT THE FACT OF THE MATTER IS THAT ULTIMATELY MANY ARE ALLOWED --- AND PERHAPS MANY OTHERS SHOULD BE IF THE VETERAN WOULD CONTINUE TO PERSIST.

IT IS A REFLECTION OF HOW SERIOUSLY DVA OFFICIALS HAVE FAILED TO FULFILL THEIR MANAGEMENT RESPONSIBILITIES THAT ONE MEMBER OF THIS SUBCOMMITTEE WOULD FIND IT NECESSARY TO INTRODUCE A BILL, H. R. 3269, TO MANDATE THAT SPECIFIC ADMINISTRATIVE PROCEDURES BE INSTITUTED. IT CLEARLY SHOULD NOT REQUIRE A LAW OF THIS TYPE FOR DVA OFFICIALS TO MAKE NEEDED SPECIFIC SYSTEMIC (AND ADDITIONAL) CHANGES. YET, IF THIS IS THE ONLY WAY TO ASSURE THAT APPROPRIATE IMPROVEMENTS WILL OCCUR, THEN THE AMERICAN EX-PRISONERS OF WAR SUPPORTS H.R. 3269. THIS INCLUDES ALL OF THE SUBSECTIONS CONTAINED IN THAT BILL.

HOWEVER, WE WOULD PREFER THE LANGUAGE OF THE UNNUMBERED DRAFT BILL WHICH PRIMARILY DIRECTS DVA TO COME UP WITH A REORGANIZATION PLAN INCORPORATING NECESSARY CHANGES. WE ALSO SUPPORT THE

GRANTING OF AUTHORITY TO DVA TO LIBERALIZE EXISTING CONSTRAINTS AND TO FUNCTION MORE FLEXIBLY IN THE FULFILLMENT OF THE ADJUDICATION PROCESSES.

WE WOULD ALSO SUGGEST THAT THE BILL INCORPORATE A PHRASE RESTATING DVA'S ADVOCACY RESPONSIBILITY TO EMPHASIZE THAT ANY REORGANIZATION PLAN DEVELOPED WOULD BE MANIFESTLY CONSISTENT WITH THAT BASIC OBLIGATION.

IN CLOSING, IN THE PAST, DVA PROGRAM OFFICIALS HAVE APPARENTLY ASSUMED THAT BROAD STATEMENTS ACKNOWLEDGING DVA'S ADVOCACY ROLE WERE SUFFICIENT. THE AMERICAN EX-POW WOULD NOW EXPECT THAT SUFFICIENT ATTENTION WILL BE GIVEN TO ASSURE THAT THE SPIRIT AND INTENT OF THOSE POLICIES ARE FULFILLED IN PRACTICE AT ALL LEVELS OF THE ADJUDICATION PROCESS FROM THE REGIONAL OFFICES TO THE BOARD OF VETERANS APPEALS.

THANK YOU.

STATEMENT OF
JOSEPH A. VIOLANTE
LEGISLATIVE COUNSEL
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
OF THE
COMMITTEE ON VETERANS AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
NOVEMBER 17, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the more than 1.4 million members of the Disabled American Veterans (DAV) and its Women's Auxiliary, I wish to express our deep appreciation for this opportunity to present our views on legislation that would make improvements in the procedures used by the Department of Veterans Affairs (VA) in adjudicating claims for veterans' benefits and to improve appellate processing of appeals at the Board of Veterans' Appeals (BVA).

At the outset Mr. Chairman, we wish to thank you, Ranking Minority Member Representative Bilirakis and all the members of the Subcommittee for your decision to give hearing consideration to the legislation contained on today's agenda. We certainly appreciate the fact that your highest priority has been placed on bringing about major improvements in the manner in which veterans' claims and appeals are processed. By focusing your continued attention on this important matter, you have demonstrated, in a most meaningful way, your commitment to ensuring that America's service-connected disabled veterans and their families receive the VA benefits and services to which they are entitled.

Mr. Chairman, you and members of the Subcommittee deserve special recognition for the concentrated effort being made to garner as much information as possible on this most important subject. The DAV acknowledges and applauds these efforts.

Like you and the members of the Subcommittee, Mr. Chairman, DAV is committed to assuring that America's service-connected disabled veterans, their dependents and survivors receive the VA benefits and services to which they are entitled.

The DAV, founded in 1920 and Congressionally chartered in 1932, has been actively involved, presenting both oral and written testimony, in every major piece of legislation affecting disabled veterans, their dependents and survivors. DAV works for the physical, mental, social and economic rehabilitation of wounded and disabled veterans, and obtains fair and just compensation, adequate medical care and suitable gainful employment for wartime veterans who became disabled in service to their country. To accomplish these goals, DAV employs a core of 220 professionally trained National Service Officers (NSOs) in 69 offices throughout the country. Our NSOs provide counseling on a wide range of VA benefits and services. However, the majority of their activities are dedicated to assisting veterans and their families on claims for compensation, pension and survivors' benefits from VA Regional Offices (ROs).

In addition to the NSOs who provide representation at ROs, DAV maintains a National Appeals Office in Washington, D.C. This office, staffed by 11 highly skilled National Appeals Officers (NAOs) and a Medical Consultant, has the primary responsibility to ensure, in all cases where DAV has been appointed as the appellant's representative, that each appeal is clearly and accurately articulated in its most favorable light

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to BVA. DAV represented 10,499 claimants before the BVA in FY 1993, almost 40 percent of all appeals before the BVA.

With the enactment of the judicial review legislation, DAV opened an office here in Washington, D.C. to represent individuals who appeal BVA decisions to the United States Court of Veterans Appeals (COVA). This office, the first office opened by a VSO practicing before COVA, is currently staffed by four Judicial Appeals Representatives (JARs), possessing a wealth of knowledge and experience regarding the adjudication of VA claims both at the RO and BVA levels.

Since its inception in mid-1989, DAV's COVA staff has represented hundreds of veterans before COVA. Even more noteworthy is the fact that our COVA staff has reviewed thousands of claims for possible representation before COVA. In meritless cases, veterans are advised not to appeal their claims to COVA, and, in many such cases, alternative actions, including reopening the claim with necessary evidence, are recommended.

Mr. Chairman, because the DAV represents veterans at every level before the VA, at the United States Court of Veterans Appeals and at the United States Court of Appeals for the Federal Circuit, we are provided with the unique opportunity to observe the entire system first hand and close up. Our professional staff of NSOs, NAOs, and JARs provide us with abundant information, not only on the problems associated with the adjudication and appeals processes, but also on new initiatives and procedures which are working well to improve the current system. One such initiative, being conducted at the New York City Regional Office, is enthusiastically supported by DAV's National Service Office Staff at that Regional Office. This initiative will be discussed in greater detail later in my testimony.

As you know, Mr. Chairman, the mission of the VA is to serve America's veterans and their families with dignity and compassion, acting as their principle advocate and assuring that they receive the care, support and recognition earned in service to this nation. In the VA's own words, "proceedings before VA are ex parte in nature, and it is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government." 38 C.F.R. Section 3.103(a).

Mr. Chairman, during the past decade, we have witnessed a steady decline in VA's ability to provide America's veteran population with quality benefit determinations in a timely manner. During this same period, VA's Veterans Benefits Administration (VBA) has had a reduction of more than 1,200 employees, more than half of which have come from the Compensation and Pension (C&P) service. The current downsizing of our nation's military is further compounding VBA's benefits delivery problems.

Within the VA, the BVA is charged with the responsibility of ensuring that a claimant has not been denied benefits to which he or she is entitled to receive. The BVA renders decisions on a claimant's appeal from the RO's adverse determination which are based on the entire evidence of record, in light of all applicable laws and regulations and the controlling precedent of COVA decisions. It is the BVA's expressed objective to decide cases on a timely and consistent basis and to issue quality decisions in compliance with statutory and Court requirements.

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In Fiscal Year 1993, the Board rendered 26,400 decisions. Of that number, 36.9 percent of those dispositions were denials of all benefits sought, 16.9 percent were allowances of at least one of the benefits sought, 44.0 percent were remand decisions, and 2.2 percent were characterized as "other" dispositions, such as withdrawn appeals.

BVA's response time -- the number of days it takes to render decisions on pending appeals during a year -- equaled 189 days at the beginning of FY 1992 and had increased by more than 50 days to 240 at the end of FY 1992. BVA's average processing time -- the average number of days BVA takes to produce a decision -- has also increased. In FY 1991, the processing time was 160 days; in FY 1992, 179 days; and, in the first two months of FY 1993, 218 days. Based on current staffing levels, it is projected that BVA's response time would be more than 550 days at the end of FY 1994.

Without any significant changes in the situation, it is projected that the average response time will be 725 days in FY 1994 and 945 days in FY 1995.

We wish to state here that our purpose in pointing out the deficiencies with VA's Veterans Benefits Administration and BVA should not be construed to reflect negatively upon VA employees. To the contrary, DAV wishes to acknowledge the efforts of those dedicated VA employees whose tireless efforts too often go unnoticed.

Mr. Chairman, as was stated in testimony before this Subcommittee in April and May 1993, DAV convened a meeting of DAV, VA and House and Senate Veterans Affairs Committee staff. The participants at this full day meeting included: DAV National Service Officers, National Appeals Officers and Judicial Appeals Representatives; a VA Regional Office Adjudication Officer, Rating Board Specialist and Hearing Officer; and Majority and Minority staff from the House and Senate Veterans Affairs Committees.

During our roundtable discussion, a wide variety of topics regarding VA's compensation and pension claims adjudication process were discussed. It was the consensus of opinion that there are no "quick fixes." Likewise, DAV and VA regional office employees unanimously agreed that the bottle neck in the adjudication of compensation and pension claims is at the Rating Board.

The rating board function within the claims adjudication process is the most time consuming and requires the greatest degree of training. Simply put, more resources in terms of employees and enhanced automated data processing equipment, must be directed to the compensation and pension claims rating function at regional offices.

Mr. Chairman, the military reduction-in-force also has been noted as a major source of the increased compensation claim workload and is contributing to the ever increasing backlog of compensation claims. We know that the current Department of Defense (DoD) budget contains funding for training and job placement for defense workers displaced by our military draw down. It would seem only fair that VA also receive funds from DoD to assist in handling the increasing compensation workload created by the military reduction-in-force. It has also been pointed out that some of the individuals being separated from military service may be ideal candidates for employment within VA's compensation and pension service.

Subsequent to the April 1993 hearing, DAV and the other VSOs met to continue our exploration into making the process

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more efficient. We took this opportunity to brainstorm on this issue. In conjunction with the other VSOs, we come to a consensus on a number of recommendations designed to improve the claims and appellate processes. These recommendations were provided to this Subcommittee and many of those recommendations are contained in the legislation before us today.

Presently, DAV is participating on the Veterans Benefits Administration (VBA) Blue Ribbon Panel on claims processing along with representatives from VBA, veterans' service organizations, the BVA and General Counsel. Their objective is to develop recommendations to reduce the backlog of claims and improve the timeliness of claims processing.

Initially, the Blue Ribbon Panel identified key aspects of the claims process where delays are occurring. The panel identified three specific areas determined to be causing the most significant problems. These areas are:

- * inadequate development of initial and reopened disability compensation claims;
- * excessive response time for requested evidence from all sources;
- * the excessive length of time cases remain in the rating boards.

At the heart of the Blue Ribbon Panel's recommendations to improve the claims processing timeliness is the realignment of the "rating activity." Currently, the VA's rating activity can be likened to an assembly line approach where many people are responsible for assembling the "nuts and bolts" of the end product, but no one is truly accountable for the final product. The panel felt that a team approach would help to streamline the process and to provide accountability for the end product. Other important elements necessary to redesigning the rating activity include:

- * centralize development/rating training program;
- * wordprocessing capability; and
- * reallocation of FTE resources.

Additionally, the Blue Ribbon Panel felt that, while this realignment would help to improve efficiency and timeliness, the VBA could not achieve significant reduction in backlog without full development of ADP initiatives. These initiatives include:

- * Claims Processing System
- * Rating Board Automation
- * On-line Reference Materials
- * PC-based letter package
- * Automated Medical Information Exchange
- * Control of veterans' records

Finally, additional areas targeted by the Blue Ribbon Panel include:

- * Expand the current VBA-VHA memorandum of understanding regarding timeliness of examinations to include examination quality measures.

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- * Establish a joint VBA-VHA education and training effort on compensation and pension examinations.
- * Establish a VA/DoD dialogue on separation examinations to ensure they meet VA requirements.
- * Educate DoD medical staff on the use of the VA's physician guide.
- * Establish a high-level dialogue with the Social Security Administration (SSA) regarding transfer of medical records.
- * Establish, if possible, a computer linkage between VA/SSA to obtain medical records.
- * Revise and simplify VA forms.

Mr. Chairman, we would again encourage the VA to conduct a pilot project at a number of Regional Offices incorporating many of the VSO and Blue Ribbon Panel recommendations. Allowing Regional Office directors who participate in this pilot project to incorporate the recommendations of the VSOs and the panel into their Regional Office operations, we believe, will give the Subcommittee adequate information upon which they can evaluate the best approach to solving the intolerable delays in VA's compensation and pension benefits delivery system.

Mr. Chairman, we are encouraged by VA management's willingness to explore new and innovative ways to process veterans' compensation and pension claims. Their recognition that we cannot continue to "do business as usual" is evident by the scope and variety of VA adjudication pilot projects. An effort must be made to continue to foster even more Regional Office innovation to improve the delivery of compensation and pension to veterans and their families.

For example, in looking at ways to redesign the claims process, the New York City Regional Office is participating in an OMB/White House initiative. This initiative will set up a case management/self-directed work team of highly trained individuals who would share responsibility for all aspects of claims development and adjudication.

Mr. Chairman, on November 8, 1993, Mr. Richard F. Schultz, Assistant National Legislative Director and I visited the New York City Regional Office and we were briefed on the management/self-directed work team initiative. We were also provided an opportunity to see first hand the operation of the self-directed work team.

Mr. Chairman, I can state that we were profoundly impressed by what we saw and we are very enthusiastic about the positive impact this program will have on the way the VA does business. By the VA's own admission, under the old system of assembly line adjudication, "success is measured by the number of claims you move off your desk." It makes no difference that these claims are shuffled from desk to desk and hand to hand without anything of substance being accomplished. There is no pride in ownership because there is no ownership of that claim or the final product. However, the new initiative is changing this measure of success. Group performance standards will replace individual performance standards for the most part, and there will be accountability established for the final product. This new initiative will also allow the group to review the process from within and to request "waivers" of those procedures which do not benefit the claimant. In their words, "if it doesn't add value to the process -- get rid of it." We believe this is a healthy attitude to have.

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Mr. Chairman, the team management concept essentially establishes small, manageable regional offices within a large regional office, and it more effectively utilizes the available talent. This new process limits the number of people necessary to handle a claim on an assembly line basis and reduces the number of errors that are made when a vast number of people must handle the claim at various stages of the adjudication process. Under the team management concept, every aspect of the claim is handled within the designated unit. This unit is responsible for everything that goes on in that case beginning with the incoming mail, to contact with the veteran, to the case development, and finally to the adjudication of that claim. Mr. Chairman, the advantages of this system include:

- * Fewer errors because fewer people are handling the claim.
- * Easier access to the claims file because they are stored within the unit.
- * The unit is responsible for the claim.
- * Veterans can actually speak to the person handling their claim, and can speak to the same person each time they call.
- * Overhead costs are reduced.
- * There is individual ownership of the claim and pride of ownership.
- * Employees become more client-oriented.
- * Employees know several jobs and have an understanding of the "big picture."

Mr. Chairman, as a result of this new initiative, the VA's New York City Regional Office expects to:

- * cut timeliness in half by the end of the first year;
- * improve quality from the veteran's perspective;
- * provide more personalized service; and
- * obtain frequent feedback from the veteran;

This new system is, however, not problem-free. These problems include an enormous investment in planning and training, logistics, and personnel issues. However, the positive aspects of this new system overwhelmingly outweigh any of the negative aspects.

Our New York City National Service Officers are enthusiastic about what has taken place over the last six months with respect to this management/self-directed work team concept. They are extremely confident that this new approach will revolutionize the New York City Regional Office and its claims adjudication process. I personally believe, based on my observations, that this new initiative is a win-win situation. Not only will the veteran benefit from this initiative, but the VA will certainly reap benefits also. The VA employees involved in this initiative will no doubt develop an esprit de corps and pride in what they have been able to accomplish. It was obvious during my brief visit that these elements were already developing.

Another innovative approach to solving Regional Office timeliness problems is taking place at the Portland, Oregon

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office. In looking at ways to speed up the claims process, they are currently testing ways to combine certain functions of the adjudication and veterans' services divisions.

Mr. Chairman, many administrative changes to streamline and improve the way VA adjudicates claims have been identified and suggested. These changes alone, however, will not appreciably reduce the ever growing backlog of VA claims.

We believe that a crisis situation currently exists in VA's Compensation and Pension Service. In order to address this crisis, there must be a large increase of employees. The VA has estimated that it will take approximately 1,050 additional employees to reduce the claims backlog to 200,000 claims. These additional employees are but a small price to pay to restore some semblance of timely and quality benefit determinations to America's service-connected disabled veterans and their families.

Mr. Chairman, DAV is pleased with the draft bill introduced by yourself, and H.R. 3269, introduced by Representative Evans. We are encouraged by this legislation and we believe that it will assist the VA in overcoming many of the obstacles it now faces in the adjudication and appeals procedures. These bills will allow the VA to move forward in attacking its current problems and backlog.

Draft Bill "Veterans' Adjudication Improvement Act of 1993"

DAV supports all of the provisions of this draft bill. The elimination of the requirement for the annual income questionnaires (Sec. 2) and the immediate transfer of military service medical records to the VA (Sec. 4) are long overdue, as is the creation of a master veteran record (Sec. 5).

DAV has no objection to requiring the Secretary of Veterans' Affairs to report to the House and Senate Veterans' Affairs Committee on the feasibility and impact of a reorganization of the adjudication divisions and VBA Regional Offices (Sec. 3); however, we will reserve our comments on such reorganization until that time when the Secretary makes his report available.

As evidence by our testimony, DAV enthusiastically encourages the Secretary of Veterans' Affairs to undertake pilot programs and initiatives (Sec. 6) that will positively impact upon the adjudication and appeals processes.

The provisions of Sections 7 and 8 will be instrumental in providing for the expeditious handling of claims. In many cases, the VA is required to obtain certificated copies of marriage and birth documents, even though these documents are already in the record. Elimination of this unnecessary development will help to speed up the process.

Mr. Chairman, accepting adequate medical reports of private physicians as sufficient evidence to support a diagnosis of a disability or to provide a reliable basis for an evaluation of the degree of any such disability without confirmation by a VA physician, will lighten the workload of VA physicians, allowing them to concentrate on those necessary examinations. The provisions of this section should have a profound impact not only on the expeditious handling of new claims, but also on the growing backlog of claims.

Finally, Mr. Chairman, those claims that have moved through the VA process and into the Board of Veterans' Affairs should receive expeditious treatment when it has been remanded by the BVA.

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H.R. 3269
"Veterans' Adjudication Procedures Act of 1993"

DAV supports all the provisions of H.R. 3269.

DAV supports the provisions of Section 2, wherein the Secretary is required to develop a new work rate standard that would encourage VA employees to fully develop and properly adjudicate veterans' claims before they could receive credit for that work product.

DAV supports the provisions of Section 3, requiring an annual report on the status of claims. These reports will provide statistical data on all aspects of claims adjudication and appellate procedures. These statistics will provide useful information that will be beneficial to both the VA and to Congress in determining what progress is being made in those areas. We hope that VA managers will keep these statistics on a daily basis and use them daily to determine what progress is being made and where delays are occurring. If properly used, these statistics should keep the VA headed in the proper direction.

DAV also supports the provisions of Section 4, 5 and 6 of this bill.

Mr. Chairman, we have two technical corrections we would like to note in H.R. 3269. First, in Section 5 of the bill, Section 7103(d) states: "The Board on its own motion may correct an obvious error ..." Pursuant to Section 7101 of Title 38, United States Code, the term "Board" refers to the Chairman, Vice Chairman and the members, currently, not more than 65. While the language noted in Section 5 is the same as currently contained in 38 U.S.C. Section 7103(c), use of the term "Board" is ambiguous. It would be less ambiguous if the phrase was expanded to include "a member or panel of the Board"

Second, in Section 6, under Section 7111(c), Effective Date, it should read "(1) Section 5109B and 7111," instead of 7110.

In closing, we wish to again thank the Subcommittee for its willingness to place the highest priority on solving the claims' adjudication backlog crisis. Together, Congress, VA and the veterans' service organizations can and must solve this national crisis.

This concludes my statement. I would be happy to answer any questions you may have.

JOINT STATEMENT OF

VETERANS DUE PROCESS

and

NATIONAL ORGANIZATION OF VETERANS'
ADVOCATES

**Presented by Keith D. Snyder, Attorney at Law,
President, National Organization of Veterans' Advocates**

before the

**Subcommittee on Compensation, Pension and Insurance
Committee on Veterans' Affairs
United States House of Representatives**

November 17, 1993

on

H.R. 3269, Veterans Adjudication Procedures Act of 1993

and

**November 5, 1993 Discussion Draft, Veterans' Adjudication
Improvements Act of 1993**

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Mr. Chairman, thank you for the invitation to present our views on H.R. 3269 introduced by Representative Evans and on the discussion draft legislation you recently proposed to address problems with the adjudication of veterans' and survivors' claims. This statement is offered on behalf of Veterans Due Process, a non-profit organization based in Oregon with a long history of advocating for improved procedural fairness in the handling of disability claims and the National Organization of Veterans' Advocates. The National Organization of Veterans' Advocates was organized this year. Its membership is open to attorney and non-attorney practitioners who are admitted to practice before the U.S. Court of Veterans Appeals. There are currently 87 dues-paying members of NOVA from 32 states, the District of Columbia and Puerto Rico. I am the founding president of NOVA.

We welcome the leadership this subcommittee is demonstrating in seeking to address long-standing problems. As an attorney who has had some measure of success in representing veterans only to be forced to wait almost a year to be paid an attorney fee—an experienced shared by many of NOVA's members—we feel that we are readily able to empathize with our clients who have suffered through much longer waiting periods. We appreciate the opportunity to share our concerns with this committee. We also hope that our members' legal education and experiences in representing clients before other agencies and courts may also assist this committee in moving forward with much-needed legislation.

Before detailing our views on the legislation under consideration, we urge this committee to extend the scope of its review of the adjudication process to also address a legislative initiative recently introduced by Senator Rockefeller as part of S. 1546. The Chairman of the Senate Veterans Affairs Committee has proposed eliminating the November 18, 1988 date for a Notice of Disagreement as the threshold to judicial review and instead substituting a November 18, 1988 date of decision by the Board of Veterans' Appeals. Although the NOD requirement was originally built in as a safeguard to prevent overloading the newly created Court of Veterans Appeals, there is no longer any reason to maintain that requirement. The caseload at the court has declined dramatically since its inception and at approximately 1,000 new cases each year it is receiving only 20% of the 5,000 cases that it was projected to receive. Moreover, many of the veterans whose cases have been stalled in the VA adjudication process with repeated cycles of remands from the Board of Veterans' Appeals to the regional offices are most in need of judicial review but are not getting it. Substituting a November 18, 1988 date of a decision by the BVA rather than a NOD date would address this inequity.

To address the legislation currently pending before this committee, Veterans Due Process and the National Organization of Veterans Advocates applaud the forward movement that the discussion draft and H.R. 3269 propose. In particular, the Chairman's November 5th discussion draft's provision to require acceptance of private physicians' examinations is most welcome. Adoption of this provision would go a long way to reduce one of the biggest impediments to speedy adjudications on initial claims as well as on those remanded by the BVA or the Court for examinations. The measure in H.R. 3269 providing for revision of regional office and BVA decisions on the basis of clear and unmistakable error is also much needed to ensure that the Secretary will not restrict through formal regulatory changes or informal policy measures an important channel for challenges to VA decisions.

COMMENTS ON CHAIRMAN'S NOVEMBER 5, 1993 DISCUSSION DRAFT, Veterans' Adjudication Improvements Act of 1993.

Section 2: Elimination of Requirement for Annual Income Questionnaires.

We support the elimination of the annual income questionnaire for pension recipients. We, however, urge the committee to require that the VA's communications with recipients regarding their duty to notify the VA of changes in their circumstances that might affect the level of VA payments be in "plain language" and reminders be offered to recipients at least semi-annually.

Section 3: Report on Feasibility of Reorganization of Adjudication Divisions in VBA Regional Offices.

We support the study of the feasibility of reorganizing adjudication divisions. Given the loss of experienced personnel and the increasing complexity of disability evaluations, there needs to be some consideration given to developing regional centers of expertise on certain types of claims. It is no longer realistic to expect all adjudicators to understand the details of every VA benefits program.

At the same time, we do not want regionalization of adjudication of certain types of claims to adversely affect the availability of hearings at convenient locations throughout the country. To the extent that modern teleconferencing can be offered to insure a hearing before the decisionmaker—even if he or she is located in a remote office—there may not be an adverse impact. We suggest that the Secretary be required to include in his report the results of a survey of veterans' advocates who currently work in regional offices to assess whether they believe their current personal contacts with adjudicators would be disrupted to such an extent that their clients would be adversely effected. Further, the Secretary should

be required to include in his report the results of a survey of adjudicators to determine the extent to which there currently are informal contacts with veterans advocates (outside the formal hearings before Hearing Officers) and whether those contacts often lead to a revision of a rating decision prior to its promulgation.

Section 4. Transfer of Military Service Medical Records.

We support this initiative.

Section 7. Statements To Be Accepted as Proof of Relationships.

We support the elimination of the cumbersome process currently in place by which certified copies of birth and death certificates, marriage licenses and divorce decrees are required. Obtaining certified copies of records is very time-consuming. As the various states' departments of vital statistics undergo budget reductions, it is increasingly difficult to obtain current information on the cost of obtaining a certified copy of a death certificate. It is often necessary to write repeatedly to state departments to obtain the correct information. We suggest that, at most, the VA require simply a photocopy of the relevant certificate or license.

Section 8. Acceptance of Private Physician Examinations.

We strongly support the requirement that the VA accept a medical examination report of a private physician if it contains sufficient clinical data to support the diagnosis of a disability or provides a reliable basis for an evaluation of the degree of any such disability. At the same time, we urge the committee to expand the scope of this provision in two ways: first, require the VA to accept a private physician's report as to the origin or timing of a disability; and, second, require the adoption of the treating physician's rule currently utilized by the Social Security Administration.

The current system for examining veterans is bankrupt. The failure to conduct an adequate examination is one of the most common causes of remands from the BVA and from the Court of Veterans Appeals. It also appears to be the cause of the greatest delay in resolving claims. Finally, it appears that the current system is draining medical staff at VA medical centers from what increasingly must be their primary duties: namely, providing health care.

It is long past time that VA health care providers stationed in VA medical centers ought to focus on health care, not disability examinations. VA physicians have no particular expertise in conducting compensation and pension examinations. To the extent that VA physicians have adopted some familiarity with the 50-years-out-of-date VA Schedule for Rating Disabilities, 38 C.F.R. Part 4, there is no reason to think that such familiarity could not be acquired by physicians in the private sector.

The current system calls for in-house VA physicians attached to a VAMC to perform C&P examinations. These examinations are supposed to be performed pursuant to guidelines found in the *VA Physician's Guide to Disability Evaluation Examinations*. Unfortunately, there are serious problems with the examination process.

The examinations are frequently truncated exams that are not performed by an appropriate specialist. Moreover, the physicians are required to type in data on computer terminals in response to too narrowly focused questions. These C&P examiners have not been treating the veteran and often do not have the individuals' claims file or past medical records available for review. Moreover, they are under severe time constraints which prohibit meaningful examinations.

Especially for persons suffering from psychiatric illnesses, being subjected to questions by a C&P examiner who has never seen the claimant before is seldom likely to produce a meaningful report. Drawing out a severely mentally ill veteran on the exact nature of his stressful combat experiences is something which must be addressed in the course of lengthy sessions during which a basic trust has been cultivated between the patient and therapist. It is patently absurd to expect C&P examiners to develop that kind of rapport in a ten-minute or even two-hour exam. Also, when the examiner is not even asked to offer his or her opinion on the origin of the condition even when the issue pending before the VA is one of service connection, the report is seriously defective.

Coupling less than complete psychiatric examinations with non-medical rating board personnel who feel they have the expertise to decide the origin of a psychiatric condition and you are left with not even the appearance of fairness in the adjudication process. Requiring the VA to accept private physicians' statements so long as they contain sufficient clinical data to support the diagnosis is a measure which we strongly support.

In my own experience with cases appealed to the Court of Veterans Appeals, one of the major reasons for moving the court to vacate and remand the case was that the BVA did not ensure that a proper examination was conducted. In some cases, no exam was conducted at all before denying the benefit. *EF v. Derwinski*, 1 Vet.App. 324 (1991). Furthermore, a 1988 VA task force study of the inordinately high rate of remands (at that time "only" 20%) from the BVA to the regional offices found that a common reason for the remand was the failure to conduct a proper examination.

It seems fundamental that veterans with orthopedic problems should be examined by board-certified orthopedists. Instead, so-called "orthopedics" exams are conducted by general practitioners who merely fill in an examination form with the heading "orthopedics examination." Over and over, I have experienced in my cases brought to the Court of Veterans Appeals, and over and over I have heard from our members, that the examiners of veterans suffering from specific problems were not specialists. Nonetheless, the non-medical VA rating board members and the BVA rejected the opinion of a private treating physician who was a board-certified specialist.

Continuing to reject private physicians' reports and continuing to give those reports less weight than VA C&P exams makes no sound sense either from the perspective of giving the appearance of a fair system or from the perspective of the economics involved. It is clearly less expensive to the VA to accept a private physician's report than to add to the already overburdened workload of VA C&P examiners. Moreover, in this day and age when the VA health care system is expected to become competitive with the private sector, continuing to require the diversion of substantial (and scarce) VA health care resources to conduct "quickie" exams does not make good sense. Every VA physician needs to be providing quality treatment.

We urge the committee to expand the provision to accept private physicians' reports to further require the VA to accord *greater* weight to the opinion of a treating physician—whether it is the opinion of a VA or private physician—than to the quickie exams by C&P examiners. Social Security claimants have the benefit of such a "treating physician rule." Claimants for VA benefits should be extended the same courtesy. Although the Department has thus far successfully prevented the adoption by the Court of Veterans Appeals of the treating physician rule, *see Guerrieri v. Brown*, 4 Vet.App. 467 (1993), our organization feels strongly that the current reality of the tremendous backlog of cases and the impact on the VA health care system of continuing to drain VA physicians from what should be their primary duty warrants a change in the system.

The treating physician rule "governs the weight to be accorded to the medical opinion of the claimant's treating physician relative to other evidence before the factfinder, including the opinions of other physicians." *Schisler v. Heckler*, 787 F.2d 76, 81 (2d Cir. 1986); *quoted in Guerrieri at 472-73*. Under *Schisler*, the treating source's opinion on the subject of medical disability, i.e., diagnosis and nature and degree of impairment, is (i) binding on the factfinder unless contradicted by substantial evidence; and (ii) entitled to some extra weight, ... although resolution of genuine conflicts between the opinion of the physician, with its extra weight, and any substantial evidence to the contrary remains the responsibility of the factfinder.

The Court of Veterans Appeals rejected adoption of the treating physician's rule *Guerrieri* in part because it found that its adoption in the Social Security Administration's system of disability determinations was grounded in statute. 42 U.S.C. § 423(d)(5)(B). The SSA statute requires Social Security adjudicators to "make every reasonable effort to obtain from the individual's treating physician ... all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source...."

Although the Court accepted the Secretary's argument that there is "no similar controlling legislation [that] applies to the VA," we contend that the SSA statute is remarkably similar to the VA's "duty to assist," 38 U.S.C. § 5107(a) (the Secretary shall assist such a claimant in developing the facts pertinent to the claim), as construed in numerous decisions by the court. Just as SSA adjudicators must make every reasonable effort to obtain medical evidence, so too has the Court of Veterans Appeals required the VA to obtain records of all physicians the veteran had named as having treated him since his separation from service (*Sibley v. Derwinski* 3 Vet.App. 188 (1992); government, including SSA, records and civilian records (*Collamore v. Derwinski*, 2 Vet.App. 541 (1992); *Murincsak v. Derwinski*, 2 Vet.App. 363 (1992)). We believe the existing duty to assist provides the basis for adopting the treating physician rule and encourage the committee to do so.

Although neither the Chairman's November 5th discussion draft nor H.R. 3269 address the Secretary's recent proposal (the "Veterans' Appeals Improvement Act of 1993" discussed before this subcommittee on October 13, 1993) to permit the BVA to utilize in-house physicians to offer their medical opinions, we feel a comment is necessary. Under the current system the BVA farms out requests for opinions to various medical schools and pays a flat fee of \$300 for whatever it receives. The BVA has also used its own staff psychiatrist to generate an opinion on which it would rely. What our members repeatedly are seeing are so-called "independent" opinions that look more like they were written by BVA staff attorneys rather than truly independent evaluations of veterans' records. The opinions generated currently through use of medical school personnel are not done after a hands-on exam. Nor are the opinions the BVA has used from its own staff psychiatrist based on an in-person examination of the veteran. Instead, they are based ostensibly on a review of records. In fact, the reports are obviously shaped by the questions presented by the BVA's staff attorneys who have already prepared a tentative decision in the case. Under the Secretary's provision, it appears that the BVA is seeking broader authority to develop

evidence against the veteran rather than to give fair consideration to the veteran's own treating physician's opinion.

The Chairman's proposal in his discussion draft legislation to require acceptance of private physician's reports along with the adoption of the treating physician rule would put a halt to the practice of developing a case to deny it. Unfortunately, without the changes we are suggesting, it appears that if the VA obtains only one unfavorable opinion, the BVA can deny the claim and the Court of Veterans Appeals will not find it clearly erroneous—even if the only physician who actually examined the veteran has offered a favorable opinion. See *Hayes v. Brown*, 5 Vet.App. 60 (1993), Fed. Cir. No. 93-7095 (appeal filed July 23, 1993).

We understand that Chairman Cragin did not renew the appointments of the medical members of the BVA and that their appointments are expiring shortly. However, we feel the potential appearance of bias would be too great if these physicians' positions were simply converted to in-house advisors. A far more desirable process would require proper examinations by properly qualified specialists and the affording of greater weight to those exams than to develop a cadre of in-house advisors.

Section 9. Expedited Treatment of Remanded Claims.

We support the requirement that expeditious treatment be accorded to claims that have been remanded by the BVA.

COMMENTS ON H.R. 3269, Veterans' Adjudication Procedures Act of 1993.

Section 3. Annual Report on Status of Claims for Benefits

We support the need for a more comprehensive annual report. We see the need, however, for requiring additional detail in the report to ensure that the public has adequate information on which to evaluate the performance of the Department.

While we support the need for reports on the timeliness (or lack thereof) of various phases of the adjudication and appeals process, we believe that there is other essential information that needs to be compiled. Namely, information regarding the allowance and denial rates by each of the regional offices, by each of the BVA members, and whether the veteran's appearance at a hearing is a significant factor in the outcome of the case.

If BVA decisions are going to be made by only a single member, there needs to be some check on what that member is doing and that information should be publicly available. Currently, the availability of judicial review is only accepted by less than 5% of those persons whose appeals are denied by the BVA. Moreover, neither the Court of Veterans Appeals, nor the BVA appears to be keeping detailed statistics on the outcome of cases. More than simply the availability of judicial review is necessary to adequately serve the persons who want to appeal to the BVA. They need to have black-and-white assurances that the BVA member before whom they are to appear has not denied significantly more appeals than the average for their particular category of disability.

Some of the information that we believe should be collected might make a significant difference to both veterans and veterans' advocates. For example, if statistics suggest that following an appearance before a hearing office, 25% of rating board decisions are reversed or that following an appearance before a BVA member, twice the average number of appeals are allowed, veterans would be well advised to make greater efforts to request and attend hearings.

We recommend that the following additional information be tracked and published annually by the Secretary:

- disposition of cases remanded from the Court of Veterans Appeals;
- disposition of cases remanded by BVA to regional offices;
- regarding cases remanded by the BVA, classify the reasons for the remands;
- track allowance/denial rates of Hearing Officers;
- track allowance/denial rates of BVA members;
- track allowance/denial rates following veteran's appearance at BVA hearing; and
- track how often the BVA accepts the opinion of the "independent" medical expert.

Section 5: Board of Veterans' Appeals Procedures

We do not support the requirement that BVA decisions be made by only one member. The Chairman of the BVA testified on Oct. 13, 1993 in support of the administration's proposal to have single-member decisions. The reasoning in support of a single member decision is that it would save time—or rather, it would slow down the projected rate of the increase in the delay by approximately 25%.

Both Veterans Due Process and the National Organization of Veterans' Advocates support reducing the time to get decisions out of the BVA. But we are concerned with the potential for a reduction in the number of allowances that may well come on the heels of giving each individual BVA member the authority to make the final decision in cases. Currently, veterans can expect that three BVA members will have to sign off on a decision.

That permits some minimal balance between BVA members who might lean more often against veterans by those who might be more inclined to give veterans the benefit of the doubt.

It does not take too much time in reviewing decisions by the BVA to begin to recognize that some BVA members fit one mold or the other. Speaking for the National Organization of Veterans' Advocates whose members represent those veterans whose appeals have been denied by the BVA, we have no desire to see more cases denied by the BVA. The current allowance rate by the BVA is only approximately 16%. The allowance rate has been fairly flat year after year. Giving free rein to BVA members who would no longer even have to contend with persuading their own colleagues to a particular point of view but who instead could be free to overzealously protect the public fisc is not desirable.

We suggest that the BVA be directed to focus in an expeditious manner with cases which need to be remanded. The BVA should establish a preliminary triage of cases to identify those that need to be remanded for failure to comply with the duty to assist. These cases should not sit at the BVA for more than a year only to be remanded with a two-page decision. If any cases are to be decided by a single-member BVA panel, those that warrant remand should be so decided.

Finally, to the extent that single-member BVA panels are utilized, there must be at least an annual accounting of the allowance/denial rate of each of them and a benchmark against which veterans can compare an individual member's performance.

We support the need for an impartial hearing panel on reconsideration as provided by subsection (c) to an amended Sect. 7103. Currently, expanded panels include members of the original section. This is fundamentally unfair to the appellant. Decisionmakers who have already decided a case should not taint the reconsideration panel. Not only does this look unfair, it is.

Section 6: Revision of Decisions Based on Clear and Unmistakable Error

We support placing in statute the provisions now only found in VA regulations for the revision of prior decisions based on clear and unmistakable error. As older veterans come forward to file reopened claims which were originally adjudicated shortly after World War II, our members are identifying significant, prejudicial errors in the original adjudications of those claims. Because these cases present the potential for enormous retroactive awards, we are concerned that the Department may seek to restrict the awards in these cases. Providing clear statutory language on this will prevent this problem from arising.

OTHER AREAS OF CONCERN

Better Notice to Appellants of Opportunity to Appeal to Court Is Needed

Given the legal orientation of both of our organizations, we would be remiss in not pointing out at least one other area in which we believe some legislative attention is necessary. We believe that the notice accompanying the final decision sent by the BVA to veterans is unfairly restrictive and has misled many veterans to not timely file their notices of appeal to the court. A revised notice that more fully explains veterans' right to seek judicial review is necessary.

The current notice distributed by the BVA is defective for four reasons:

1. It fails to inform veterans that their notice of appeal to the Court must be in the hands of the Clerk of the Court before the end of the 120th day following the BVA denial.
2. The BVA's notice does not provide a fixed date by which the notice is to be filed.
3. The BVA's notice does not inform veterans that they can file their notice of appeal with the Court via telefacsimile.
4. The BVA's notice does not inform veterans that the Clerk of the Court offers a list of persons admitted to practice before it.

I have personally reviewed numerous appeals by veterans who waited to mail their Notice of Appeal to the Court on or shortly before the 120th day following the BVA decision under the mistaken impression that they needed only get their notice of appeal date-stamped by the post office by the deadline. It is not unexpected that veterans who were familiar with the VA's mailbox rule might also assume a similar rule applied for the appeal to the Court. No information is provided by the BVA to the contrary. (S. 1546, introduced by Senator Rockefeller would require the Court to adopt the mailbox rule which would alleviate part of the problem with the BVA notice.)

Calculating the deadline is no simple feat either. It requires familiarity with the Court's rules for calculating the counting period (i.e., whether to begin counting on the date on the BVA decision or the next day and what to do if the deadline falls on a particular holiday or weekend. We do not believe it is asking too much to require that the BVA

actually stamp on the face of its decision the actual deadline date—down to the day of the month.

The BVA also fails to provide veterans with the phone number to which they can direct their notice of appeal via facsimile (202-501-5848).

Finally, the current notice does not inform potential appellants that there is help available to evaluate whether they should appeal to the Court or pursue other options. The Clerk of the Court currently distributes a list of attorney and nonattorney practitioners to persons who file their appeal *pro se*. Unfortunately, the current BVA notice does not inform veterans of the availability of this list.

The Chairman of the BVA has refused to revise the BVA notice to incorporate these suggestions. They are minor in form but could make a significant difference for many veterans. The availability of judicial review should not be thwarted because the only notice veterans receive of the opportunity to appeal is a minimalist bureaucratic statement in tiny type. We urge the committee to amend 38 U.S.C. § 7104(e) to require the BVA to improve its notice of appellate rights.

STATEMENT OF PHILIP R. WILKERSON, ASSISTANT DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE SUBCOMMITTEE ON
COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
NOVEMBER 17, 1993

Mr. Chairman and Members of the Subcommittee:

The American Legion appreciates the opportunity to express comments on legislation to provide certain improvements in the adjudication of veterans' claims.

Before addressing these bills, we wish to commend you, Mr. Chairman, for scheduling this hearing to continue the discussion begun earlier this year of proposed changes in VA's claims adjudication and appeals process intended to help bring the mounting backlog of pending claims under control and provide for the more timely delivery of benefits and services to veterans. Since the hearing held last month, Secretary Brown has released the report of the VA's Blue Ribbon Panel on Claims Processing. The American Legion was a member of the Panel. We have included in our testimony discussion of several of the Panel's recommendations, since they relate directly to the issues addressed by the proposed legislation under consideration today.

H.R. 3269 proposes a number of procedural changes in the claims adjudication and appeals process.

One provision of this measure would amend 38 USC Chapter 7 to require VA to revise its current work rate standards for regional office adjudicators so that credit for work on a claim will only be given when such claim has become final. The term "final" meaning that the claimant has either failed to perfect an appeal or exhausted his or her appellate right through an appeal to the Board of Veterans Appeal.

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The American Legion supports the intent of this initiative. We believe this could be accomplished through an integration of the data systems in use by the Veterans Benefits Administration and the Board of Veterans Appeals.

However, we believe there is a serious problem with the VBA's system of work rate standards which contributes to the backlog problem. This system does not provide complete and accurate information on the amount of time it takes for a case to go from beginning to end nor does it reflect the total number of cases handled and disposition of issues claimed. The reports derived through this system provide information on the aggregate actions performed once the claim has moved through the various steps of the development, adjudication, and authorization process. The number of individual cases worked and the total amount of time to complete action on all of the issues in the particular claim is lost in the computation of "end products" or work credits. End products are one of the principal means by which the productivity of individual adjudicators and rating specialists is measured. These end products are also used by VA Central Office to measure a station's productivity and in determining the personnel allocation for the adjudication division as well as for other program divisions, i.e., loan guaranty, and veterans assistance.

Earlier this year, at your recommendation, Mr. Chairman, several of the veterans organizations met and reviewed a variety of factors which contribute to the increasing problems of quality and timeliness in claims processing. A number of recommendations focusing on legislative and administrative changes affecting the operations of the regional offices and the Board of Veterans Appeals were submitted to you in May. Among the problem areas identified, there was consensus that the current work rate standards system promotes directly and indirectly improper, unnecessary and piecemeal development of cases. This causes delays in a final decision on a claim and

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contributes to the overall backlog of pending cases. The current system does not put a premium on the quality and timeliness of the end products. Rather, it emphasizes producing more end products by the way credits are assigned for certain end products. Hypothetically, the credit for completed action on a pension claim could be comparable to a reopened compensation claim, or an end product could be taken prematurely on a claim and if additional work was subsequently required, a second end product could be taken with no penalty. VA's comment on this recommendation was that as a result of its annual work rate studies the work rate credit had been increased from 3.59 hours in 1990 to 5.6 in 1992. The adjustment reflected the additional time required for development, due process requirements, and more complex adjudication. This response does not address the timeliness or quality issue.

We strongly believe a substantial overhaul of the current work rate standards and reporting system is long overdue. This proposal would mandate that VA implement new workrate standards within 180 days of enactment of this provision. Our only concern is that the 180 day timeframe may not be sufficient to develop and implement the required changes in the present system. In addition, VA is already working on a number of new information and claims processing systems which are scheduled for implementation under the VBA Stage I computer modernization program within the next one to two years which may or may not have an impact on the current workrate standards. VA's Blue Ribbon Panel on Claims Processing has also made a number of recommendations which if implemented, may also have an impact on the work standards.

The American Legion believes VA needs a work rate system that measures the timeliness and quality of service and not merely the number of end products taken. Toward that end we would like to see VA take a comprehensive approach towards integrating these new claims processing systems to provide the maximum amount of useful information possible and eliminate those reporting methods and procedures which are out-of-date or

which provide only limited information. In light of these concerns, we believe VA should be requested to report to this Subcommittee within 30 days evaluating problems and deficiencies in the current system of workrate standards and the proposed timeframe for the implementation of this proposed legislative initiative.

H.R. 3269 would also amend 38 USC 529 to require that the Secretary annually submit to Congress a detailed report on the status of claims for benefits decided by the regional offices during the preceeding fiscal year, beginning with the third fiscal year following the date of enactment of this section. This report shall be submitted in conjunction with the required annual report on the activities of the Board of Veterans Appeals.

The reporting requirements of this provision are extensive. It is unclear if the current statistical system develops the type of information called for or if it could be modified without too much delay or difficulty to compile the necessary data. It is also unclear if any such requirements would adversely affect the adjudication workload in order to record the basic data as cases are worked.

As with the proposed changes in the workrate standards, we recommend that VA be directed to begin developing a revised or expanded program to compile this type of information in conjunction with the development and implementation of the new claims processing systems in the Stage I of the computer modernization program.

However, before this provision is enacted, we believe VA should be requested to provide this Subcommittee within six months an assesement of the resources which will be required to develop, test, and implement each of these reporting requirements; the effect, if any, on current planning and development of other projects; the potential impact such changes in processing procedures would have on productivity in the

regional offices; and the timeframe for implementing these changes.

The legislation also proposes to amend 38 USC Chapter 51 to authorize a determination on a claim for benefits to be made by a single rating official, rather than by a rating board of three individuals.

The utilization of a single member rating board was among the several changes in the adjudication process recommended by the veterans service organizations, as discussed earlier in our statement. It would help increase the rating board's overall productivity. It would also provide accountability for the decisions issued, thereby helping to improve the quality of the decisions. Under the current rating board structure, effectively one member writes up the decision and the other two members sign it without generally performing an in-depth review of the claim. If, in reality, one individual is making the decision, the claimant should know who that individual is.

VBA has for some months been testing the use of single member decision-makers at certain regional offices. We believe VA should be requested to inform this Subcommittee of the results of its evaluation of this test program within the next 90 days.

However, we also believe that a change to single member rating board should be considered in the context of the recommendations of VA's Blue Ribbon Panel on Claims Processing which call for, among other things, a basic reorganization and realignment of all rating functions within the regional offices. This type of major structural and procedural change would improve the quality and quality of the claims process and more effectively use available resources.

The proposed legislation would also provide that the official conducting a personal hearing following a decision by a rating official shall issue a determination in the case without

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referring the case back to the rating official for implementation.

The American Legion supports this proposed change. Under current procedures, when the Hearing Officer at a regional office makes a favorable decision on a claim for a new or reopened claim for service connection or an increased rating, the records must be referred back to the rating board for a rating of the disability or disabilities at issue. This "pass back" to the rating board is, in our view, an unnecessary, time consuming step. It only serves to increase the workload in the rating board and delay benefits to the veteran. The Hearing Officer is equally qualified as a rating board specialist to decide all issues in the claim and assign an appropriate disability evaluation.

With regard to actions by the Board of Veterans Appeals, The American Legion supports of the following changes proposed by this legislation.

A proceeding before the Board shall be assigned to a single member for disposition.

A decision of the member on the appeal shall be final, unless the Chairman orders reconsideration of the case. Where reconsideration of a case is ordered, it shall be heard by a section of the Board of not less than three members, not including the member who made the original decision. In addition, the Board may correct an obvious error in the record without regard to whether there has been a motion or order for reconsideration.

The legislation would further amend 38 USC Chapter 51 to provide that a decision of the Secretary is subject to revision on the grounds of clear and unmistakable error. If evidence establishes the error, the prior rating shall be reversed or revised. A review to determine whether clear and unmistakable

error exists in a case may be instituted upon the Secretary's own motion or upon request of the claimant at any time.

The legislation would also amend 38 USC Chapter 71 to similarly provide for revision of decisions of the Board of Veterans Appeals based on clear and unmistakable error. It specifies that decisions of the Board are subject to revision on the grounds of clear and unmistakable error and that a review to determine this issue may be instituted by the Board on its own motion or upon request of the claimant at any time. It also specifies that if a claim is filed at a VA regional office which raises the issue of clear and unmistakable error involving a decision by the Board of Veterans Appeals, such claim is to be promptly referred to the Board for consideration of this issue. In addition, any decision by the Board of Veterans Appeals on the issue clear and unmistakable error in a prior decision will be subject to review by the U. S. Court of Veterans Appeals.

Mr. Chairman, the proposals to authorize single member Board decisions and to provide for reconsideration by a panel of at least 3 members were included in a draft bill and discussed before this Subcommittee on October 13th. We believe their enactment will assist in improving the Board's productivity. However, as we stated at the hearing last month, if single member Board decisions are authorized, the Board must have additional staffing resources to upgrade and improve the quality assurance program to meet the higher production level. We also believe the proposal providing for judicial review of the issue of clear and unmistakable error will be advantageous to veterans in their efforts to receive all benefits to which they may be entitled.

The draft legislation under consideration today, entitled the "Veterans' Adjudication Improvements Act of 1993" also proposes a number of changes in the claims adjudication process.

Section 2 of this measure would eliminate the requirement for annual income questionnaires which are currently used to

annually verify the income of individuals in receipt of veterans disability and death pension and parents DIC. It would require such recipients to notify the VA of a material change in their annual income or corpus of estate.

Section 3 would require the Secretary to submit a report on the feasibility of reorganization of adjudication divisions in VBA regional offices to the Congressional Committees on Veterans Affairs within 6 months after the enactment of this provision.

Section 4 would require the Secretary to submit a report detailing the status of an agreement with the Secretary of Defense to provide for the immediate transfer of an individual's service medical records to VA upon separation from active duty to the Congressional Committees on Veterans Affairs within 90 days of enactment of this provision.

Section 5 proposes that within one year following enactment, VA shall begin development of a recordkeeping system based on a master veteran record.

Section 6 would require the Secretary to submit a report to the Congressional Committees on Veterans Affairs describing pilot programs and major initiatives affecting the adjudication of claims being tested in the regional offices.

Section 7 would authorize VA to accept the written statement of a claimant as proof of marriage, dissolution of a marriage, birth of a child, or death of a family member in a benefit claim. If the statement on its face raises a question as to its validity, the claimant may be required to submit the necessary documentation in support of such statement.

Section 8 would authorize VA to accept a medical examination report of a private physician in support of claim for disability compensation benefits without the confirmation of

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a VA examination if such report contains sufficient clinical data for VA to evaluate the disability.

Section 9 directs the Secretary to take such actions as may be necessary to provide for the expeditious handling of cases remanded by the Board of Veterans Appeals.

Mr. Chairman, The American Legion supports all the initiatives set forth in this legislation. They essentially address most of the recommendations to improve the claims adjudication and appeals process put forward by the veterans service organizations earlier this year and which were also discussed at the legislative hearing conducted last month.

We believe there is an urgent need for action to develop and implement effective solutions to the growing problem of the backlog of pending claims due to a decline in quality and production in the regional offices. The legislative initiatives considered today are clearly important and necessary steps toward improving both the quality and timeliness of VA's service to veterans.

A few days ago, Secretary Brown released the report of the VA's Blue Ribbon Panel on Claims Processing which focused on solutions to the main problems causing or contributing to current delays in the disposition of benefit claims. It included a number of recommendations involving operational and procedural changes in the claims adjudication process, i.e., the way in which regional office rating activity is structured, the physical flow of cases through the process, providing improved ADP support as soon as possible, obtaining service medical records and other evidence faster, etc. The Panel's report highlighted the need to assign top priority to the development and implementation of certain ADP initiatives which are to be included in VA's Stage I computer modernization program. The Panel's recommendations also emphasized the need to devote additional resources to training of regional office personnel involved in claims adjudication. The recommendations called for

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a variety of changes and improvements in the way VA communicates with its customers as a way to cut down delays and improve service.

Mr. Chairman, it is noteworthy that the development of the Panel's recommended changes was based on the general premise that most of these could be implemented by the Secretary within existing resources over a period of 6 to 18 months. However, the Panel's report makes it clear that there is no magic switch or one solution to the current workload problems facing the regional offices. If progress is to be made in the near future in reducing the mounting backlog, it will require a systematic and comprehensive approach. This effort will also require a strong commitment by VA management and program staff at all levels in order to ensure the successful implementation of the many changes which will be required in the traditional way VA has handled and adjudicated claims for more than 55 years.

The Panel's recommendations provide a basic blueprint for VA showing where and how the system can be changed and improved. We believe Congress has a very large stake in the success of this project and should do everything possible to encourage, assist, and support VA in doing what needs to be done. Likewise, followup through continued oversight in the next several years will be essential. VA can accomplish the majority of the administrative and procedural changes by reallocating existing resources and personnel and by directive. However, when it comes to the costs of physically reorganizing the rating activity in the regional offices regarding personnel, travel and training, reprioritizing some of the ADP initiatives this, in all probability, may require some additional funding to complete implementation of some of these initiatives within the estimated time frames.

Mr. Chairman, that concludes our statement.



BLINDED VETERANS ASSOCIATION

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TESTIMONY
PRESENTED BY
THOMAS H. MILLER
FOR THE RECORD
ON BEHALF OF THE
BLINDED VETERANS ASSOCIATION
BEFORE THE
HOUSE VETERANS' AFFAIRS
SUBCOMMITTEE ON
COMPENSATION, PENSION AND INSURANCE

NOVEMBER 26, 1993

CHARTERED BY THE CONGRESS OF THE UNITED STATES

Mr. Chairman and members of the subcommittee, on behalf of the Blinded Veterans Association (BVA), I want to thank you for the opportunity to present our views on HR 3269 and the draft bill authored by you Mr. Chairman. I regret not being able to appear at the hearing to present our views but scheduling conflicts just did not permit our attending the hearing. We appreciate the opportunity however to submit for the record. BVA is very encouraged by the intent of both Mr. Lanes bill and yours because we believe these bills make a real attempt to address the fundamental problems contributing to the backlog in claims pending before the Board of Veterans Appeals. In testimony before this Committee in October, we indicated the focus of problem solving should be at the VARO level not primarily on the Board. It was our contention that if half the claims were properly developed and processed at the local level many fewer appeals would result. Previous legislation attempted to deal with the backlog problem by imposing changes to the appeals process and in some cases limiting the due process rights of veterans because of increased work load attributed to COVA decisions.

Mr. Chairman there is no doubt that COVA decisions have increased the Boards and VAROs work level but more timely adjudication of claims and any subsequent appeals cannot be remedied by an erosion of veterans rights to appeal. We also acknowledge that with the military drawdown currently under way the work load will only increase so it is incumbent on VA to find administrative approaches to processing claims which will expedite the process without sacrificing quality on veterans rights. Certainly the computer modernization plan will facilitate such efforts but VA is still some time away from full implementation of a more sophisticated data processing system. Short of restoring all the cuts in personnel BVA suffered over the past 10 to 12 years the backlog will continue in the absence of new and innovative approaches.

We do believe however, Mr. Chairman that provisions of both bills under consideration make important steps towards that end and combined could produce the kind of legislation that could make a difference.

HR 3269 "Veterans Adjudication Act of 1993"

Section 2: Work Rate Standards for Adjudication Employees

BVA has some concern about this provision which would not allow work credit until final determination is made on a claim including any appeals. It would seem to us there are too many variables in the entire process over which adjudication employees have no control and it seems unfair to penalize them unnecessarily. Additionally, such standards could actually work in the reverse and slow the development and processing down for fear of being penalized. Without question reasonable and achievable work standards should be instituted but incentives must be found which clearly encourage employees to give their best effort without expecting them to have control over all possible variables that may influence each particular case.

Section 3: Annual Report on Status of Claims for Benefits

BVA can not support this provision of the legislation because it would require too much time and manpower which is badly needed in claims processing for something of very limited value. Clearly oversight and accountability are extremely important but the exhaustive nature of the reporting required seems to be overkill to us with little data to explain why a claim is taking so long to process.

Section 4: Official Determining Original and Reopened Claims for Benefits

This provision also causes some concern for BVA in terms of quality of decisions, level of expertise of individuals rendering decisions and the due process rights and protection for veterans. While we have supported single member panels at the Board level, providing this authorization to individuals at the VARO level could very well compromise the quality of decisions and due process protection.

Section 6: Revision of Decisions Based on Clear and Unmistakable Error

BVA strongly supports this provision and encourages that retroactive benefits should date back to the date of the original claim.

Draft bill "Veterans Adjudication Improvement Act of 1993"

Section 2: Requirement for Annual Income Questionnaires

BVA supports this provision and agrees with Secretary Brown who recommended this measure that would realize significant savings of resources that could be applied to reduction of the adjudication backlog. Although it will not provide all the additional resources we believe are necessary it certainly is a step in the right direction.

Section 3: Report Feasibility of Reorganization of Adjudication Division at the VBARO

Again BVA endorses this approach to seeking new and innovative approaches to improve the adjudication process. We understand a pilot project is already underway in the VARO Manhattan utilizing a team approach to process claims with very positive results. More of this kind of effort needs to be encouraged and this provision will certainly reinforce that approach.

Section 4: Transfer of Military Service Medical Records

This provision must be adopted and VA encouraged to establish an agreement with DOD that all branches of the Military must forward to VA immediately upon discharge from active duty military records. VA already has such an arrangement with the Army and other branches should also be required to comply with this measure.

Section 5: Master Veterans Record

This provision makes good sense to us and utilizing the Social Security number seems the most logical approach.

Section 6: Report on Pilot Projects

This provision seems to relate directly to Section 3(a) on reorganization of adjudication at the VBARO which we endorse.

Section 7: Statements to be Accepted as Proof of Relationships.

BVA supports this provision. Anything that simplifies for the claimant filing a claim will certainly be helpful. This is particularly true for severely disabled vets who have more difficulty getting around to collect originals of official documents in order to file a claim.

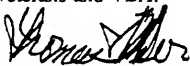
Section 8: Acceptance of Private Physicians Examinations

BVA wholeheartedly supports this section and has long contended that private physicians examinations should be acceptable. All too frequently compensation or pension eye examinations completed by VA physicians have failed to complete comprehensive examinations resulting in inappropriate denials of claims. Failure to conduct Field Tests for example frequently can result in a denial because Acuity alone may not qualify for legal blindness but severe field restrictions do qualify a veteran. Clearly, if a private physicians examinations adhere to the Physicians Guide for performing examinations for any given condition it should be admissible and would save the time of having another exam conducted by VA.

Section 9: Expedited Treatment of Remanded Claims

BVA supports this provision.

Mr. Chairman this concludes our review of both Representative Evans bill (HR3269) and your draft bill. As can be seen from our comments, there are elements of both bills we find desirable and in combination could improve the adjudication process significantly. Thank you again for allowing us to present our views for the record and as always we look forward to working with you and the committee staff to find appropriate solutions to problems confronting veterans and VBA.



Thomas H. Miller
Director of Governmental Relations
Blinded Veterans Association
November 26, 1993



FLEET RESERVE ASSOCIATION

*Representing All Active Duty, Reserve, and Retired Personnel of the
U.S. NAVY ☆ U.S. MARINE CORPS ☆ U.S. COAST GUARD*

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**STATEMENT OF THE FLEET RESERVE ASSOCIATION
TO THE HOUSE SUBCOMMITTEE
ON COMPENSATION, PENSION AND INSURANCE
HOUSE VETERANS AFFAIRS COMMITTEE
HEARING ON H.R. 3269**

Improvements in the procedures used by the Department of Veterans Affairs (DVA) to adjudicate claims for veterans' benefits is one of the more important issues concerning veterans' service organizations in the 103rd Congress. There are a number of reasons causing the DVA claims backlog and claims timeliness deterioration. Chief among those reasons is the lack of guidelines and procedures for veterans' claims adjudications. H.R. 3269 makes significant improvements in the procedures used by DVA in adjudicating claims for veterans' benefits and the Fleet Reserve Association firmly supports the Subcommittee's effort to correct problems in the claims adjudications process.

While the Fleet Reserve Association firmly supports H.R. 3269, there are a couple of matters that trouble our membership. First, there is no specific language concerning workload and record keeping duties. Will enactment of the bill require additional full time equivalent (FTE) employees to administer the reporting process of the bill? If so, does the DVA have to take on the additional work load with current resources or will additional resources be provided under another bill? Secondly, although specific Congressional guidelines and procedures will help to bring the claims backlog down, we believe that the lack of adjudicator training is a major problem that should be addressed with this legislation. Finally, will the annual report on the status of veterans' claims benefits be distributed to all veterans' service organizations?

Mr. Chairman, thank you for this opportunity to present our views. The members of the Fleet Reserve Association fully agree with the spirit of Chairman Slattery's efforts to reduce the DVA's claims backlog, and we trust that this hearing marks the beginning of a meaningful, constructive procedure to accomplish that task. America's veterans deserve no less than timely and proper decisions on their claims for veterans' benefits.

As always, the Fleet Reserve Association stands ready to work with the Congress on issues concerning the nation's veterans.

WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSES

QUESTIONS SUBMITTED BY HONORABLE LANE EVANS THROUGH HONORABLE JIM SLATTERY, CHAIRMAN, SUBCOMMITTEE ON COMPENSATION PENSION AND INSURANCE COMMITTEE ON VETERANS' AFFAIRS

HEARING ON LEGISLATION AFFECTING VA ADJUDICATION AND APPEALS PROCESS

NOVEMBER 17, 1993

QUESTION 1: Please provide the Subcommittee and I with copies of the executive summary of regional offices surveyed in 1992 and 1993 that was sent to the Office of the Deputy Under Secretary for Benefits earlier this year.

ANSWER: An executive summary of a field survey is an unofficial courtesy document made available to the office of the Under Secretary for Benefits at the time a consolidated final report of survey is issued. It is prepared by the survey's program coordinator, a staff analyst responsible for the conduct of the survey, who does not have line authority over any service or staff element. It includes only the highlights of the survey and several of the most notable action items. It is not a definitive document regarding the survey. It has no set format. Only the original is produced; there is no known requirement to retain copies. The attached copies represent those summaries which are presently available. Copies of the complete reports of survey are available upon request.

QUESTION 2: The VA work measurement system has been criticized by Price-Waterhouse and other groups. In particular, the use of the end products was attacked because these groups noted how easily the end products could be manipulated.

Please provide both the Subcommittee and I with copies of these critiques.

What actions has VA taken to address the specific criticisms of these groups.

ANSWER: Apparently the report to which you are referring is the one prepared by Arthur Young and Company in 1985 and entitled "An Evaluation of the Department of Veterans Benefits Work Measurement System". The executive summary of that lengthy report is included for your review.

The report noted that productivity as measured through end products can be affected by incorrect use of borrowed and loaned time, exclusion of direct labor non-GOE hours, the method by which work rate standards are developed, and the inclusion of processes or activities as final end products. We have improved our reporting controls on borrowed and loaned time to ensure that for every hour loaned by one work element, an equivalent hour is borrowed by another. We continuously review the types of work classified under each end product to make sure that equivalent work efforts are being classified together. In addition, we have performed annual work rate studies for the past three years to confirm that the proper relationship among all the types of work is reflected in the work credit assigned to each category. As part of our responsibility for program integrity, we check work output at field stations for abnormalities. When we find one, we ask local managers to provide support for their actions.

QUESTION 3: Prior to the subcommittee's November 17, 1993 hearing I had been informed by several VA staffers, including the Acting Under Secretary for Benefits, John Vogel, that the data required under Section 3 of H.R. 3269 could easily be obtained from the Target, ATS, or BVA systems.

Can VBA currently provide the data required under Section 3 of H.R. 3269? If not, specifically, what data can not be provided and why?

ANSWER: Currently we have some if not most of the requested information available through the Benefits Delivery Network, from either the Pending Issue File or the Appeals

Tracking System. Some modifications would be necessary to gather additional data such as the dates of mailing decision notices, as would changes to properly integrate the various items of information for the proposed reports. However, adjudicative staff would need to update pertinent events to keep the case information current, using time that would be better spent actually processing the claims to reduce the backlog.

QUESTION 4: By reforming the work rate standard for adjudication employees, Section 2 of H.R. 3269 provides an incentive to adjudicators and RO managers to develop claims properly and to deal with all issues. And the RO would be held accountable if the claim had to be readjudicated because of a premature decision. Nevertheless, VA has opposed Section 2 stating that the new work credit system would make it more difficult to justify the Department's annual budget request.

Could implementation of Section 2 of H.R. 3269 aid veterans by encouraging adjudicators and RO managers to develop claims properly and to deal with all issues?

If not, what evidence do you have that could show that changing the way work credits are issued would not motivate adjudication officers to more fully develop claims when they are first received?

ANSWER: Section 2 of H.R. 3269 is essentially neutral to the processing and outcome of a claim. It provides neither a strong incentive nor a compelling disincentive for claims examiners to properly develop and address all issues. Tying the work credit to the appeal process ignores the point that even though a claim may have been properly adjudicated, a claimant may appeal any decision based on simple disagreement, even where there is no VA error. The majority of the 3.4 million decisions made in FY 93 (approximately 98 percent) were not appealed. This should not be ignored when constructing a work credit system.

Another consideration is appropriate here. Claims examiners' performance standards generally contain three critical elements: quality, timeliness, and productivity. In the past few years, in order to reinforce our basic policy that each claim must be adjudicated correctly and quickly, we have encouraged movement to quality and timeliness as the only critical elements. When there is a failure to adjudicate correctly and when timeliness is affected by poor development, the remedy should be based in improved training and enhancements to the processing system, not in changes to the work-credit system.

QUESTION 5: One purpose of Section 2 of H.R. 3269 is to provide data to VA managers and Congress about how long it takes for a claim that is appealed to be adjudicated.

Does VA collect this data and is there a current report that provides this information?

If so, please provide the Subcommittee and I with copies.

If not, wouldn't collection of such data better enable VA and Congress to oversee the adjudication system and ensure that veterans claims are dealt with in a timely fashion?

ANSWER: In FY 93 about 38,000 appeals were received at the Board of Veterans Appeals (BVA), which is less than 1.5 percent of the total work completed. We have a number of reports that allow us to track claims from the point of receipt to the adjudication decision and eventually the outcome of any appeal that may be filed. Our Appeal Tracking System (ATS), for example, provides a means for monitoring appeal processing through a series of reports designed to help move each case through the process and provide a tool for identifying problems requiring correction. In addition, BVA has a PC-based computer program to docket and track cases received.

QUESTION 6: In VBA's opinion, what is an acceptable error rate for substantive and material errors?

BUDGET AND FINANCE STAFF

Although there are numerous recommendations, the survey team members noted that they are basically procedural in nature and a number of them were implemented while the survey team was on station. There has been overall improvement in the operation of the division. Some of the recommendations include:

- Ensure the division develops long and short range plans for accomplishing its goals.
- Ensure that all documents are date stamped upon receipt in the division.
- Ensure that cost ceilings are not exceeded.
- Ensure that the adequacy of the Agent Cashier's advance is verified in accordance with MP-4.

PERSONNEL

The Personnel Management program at the Boston VARO is a well managed operation. The division is aggressive in its desire to provide the regional office management with the support they need to perform their duties. The recommendations will strengthen an already strong division.

- Improve maintenance of the Official Personnel Folders.
- Review recognition of High Level Performance to insure that all appropriate information is completed on all forms forwarded for approval.
- Identify positions that can be utilized to promote Upward Mobility and establish a local policy that communicates this to employees.

VA REGIONAL OFFICE
SAN DIEGO, CA
NOVEMBER 18 - 22, 1991

EXECUTIVE SUMMARY

All areas of operations, except Loan Guaranty, were reviewed at the San Diego VARO. The only area of program concern was Finance where over 25 recommendations were made. Many of the recommendations were procedural in nature and not significant. Areas needing the most attention included monthly reconciliations, proper documentation of action taken, and supervisory verification (initial and review). All of these findings were minor in nature, and all of them can be easily corrected in a fairly short period of time.

Mostly procedural recommendations were made in the other areas. Program requirements are generally being accomplished in an efficient manner. Good controls are in place and they are monitored regularly by station management through the use of management briefings and SAOs. All Division Chiefs receive excellent support for their programs from station management. In the past, there were some problems in this area. However, with the new Director coming on-board in October, all issues involving program support from station management have been resolved. Moreover, Division Chiefs spoke very highly of the new Director, and they feel that he will enable them to further improve benefits delivery to veterans.

At the request of the Director, special attention was devoted to assessing communication at the station. Without exception, communication as well as working relationships among divisions were found to be excellent. Also, the Director expressed concern about his staff having a thorough understanding of DOOR and being able to put it to full use. We found limited evidence to support the Director's concern and agreed to share his concern with the Chief of the Performance Evaluation Office (20A42). 20A42 will followup as appropriate. There were no problems with the union or service organizations. Individual program summaries are as follows:

Compensation & Pension

No major findings. Recommendations and suggestions included the following:

- ° Amend the WIPP User Plan to include search and annotation requirements.
- ° Include all pertinent data on formal POW ratings (date, place, camp name).
- ° Review transfer-in procedures for surviving spouse claims.
- ° Use color-coded date tags to reflect the month claims are received.

Education

No major findings. Recommendations and suggestions included the following:

- ° Reduce the number of proposed compliance surveys to a reasonable level.
- ° Stop releasing large retroactive payments based on telephone authorization.
- ° Conduct SAO on "Work Flow and Use of Management Controls - Education."
- ° Review WIPP screens periodically to determine the status of pending approval and compliance survey end products in the Target system.

2.

Executive Summary--VARO San Diego SurveyLoan Guaranty

There is no Loan Guaranty program at San Diego.

Veterans Services

No major findings. Significant recommendations/suggestions included:

- Conducting special SAOs and improving the thoroughness/quality of SAOs.
- Providing training to estate analysts and field examiners.
- Including more details/justifications in field examination reports.
- Strengthening the quality assurance program in the F&FE Activity.

Vocational Rehabilitation

No major deficiencies. Significant findings included the following:

- Assess nonservice-connected conditions and personal issues in the initial evaluation.
- Develop more comprehensive IWRPs and provide closure statements.
- Reconcile case discrepancies between C&P and Chapter 31 Master Record.
- Provide training to improve Target processing of case status changes.
- Acquire an additional target terminal and a scanner to score tests.

Administrative Services

No significant findings, but several housekeeping items. Recommendations and suggestions included the following:

- Update Early Mail Release delegation of authority.
- Conduct annual inventory of station stock in 4th quarter of FY.
- Include samples of PA and FOIA requests in the mail routing guide.
- Process properly all outgoing service organization mail.
- Consider relocating typists assigned to Adjudication to the CTA.

Finance

The most significant findings in this area were mentioned on the previous page. Other recommendations and suggestions included the following:

- Accrue cost of fringe benefits along with base pay.
- Reconcile PAID general ledger accounts and initial/date the listing.
- Date stamp all obligation documents upon receipt in Finance.
- Record quarterly depreciation entries in the proper account.

Personnel

No major deficiencies. Significant findings included the following:

- Purge and maintain all Employee Performance Folders.
- Develop an annual training plan and needs assessment.
- Conduct meetings with AFGE on a monthly basis with the Director.
- Rewrite all 25 circulars where supervisory letters were issued.

VA Regional Office
San Juan, PR
December 2 - 6, 1991

EXECUTIVE SUMMARY

The VBA consolidated survey of the San Juan Regional Office took place during the week of December 2, 1991. All areas of the RO were surveyed. The San Juan office has characteristics that are unique partly due to the fact that it is truly a bilingual territory, often requiring work to be done in two languages. Also, the office deals regularly with circumstances beyond their control. Power outages are common, laws dealing with loan guaranty are different requiring special attention, and other environmental matters force the office to deal with matters that are unknown in the continental United States.

The Regional Office appears well managed and staffed by dedicated employees. The management team seems very competent and committed to their work and the Division Chiefs' cooperation with the survey team was excellent. Overall, the survey found relatively minor problems with the administration of VBA's programs in light of the extremely high workload.

Some of the highlights of the teams' findings are as follows:

Compensation and Pension

The Adjudication Division is well managed and staffed by experienced and able employees. There is very good quality in the work done in San Juan. Also, they seem to reach out to veterans. Their income verification program is progressing very well. Although none were considered major, the following were noted:

- Reemphasize regular WIPP reviews.
- Discontinue the review of WIPP 50 reviews by the Assistant Adjudication Officer and leave it to senior adjudicators.
- Require rating board review of all original compensation claims to determine if a compensation examination is necessary, which could be conducted concurrently with development for service medical records.

Education

- Cease charging DEA (Ch. 35) claimants an overpayment incurred by claimant's parent.
- Assure that compliance surveys are accomplished as scheduled.

Loan Guaranty

Most of the areas in Loan Guaranty looked good. One concern was that vendee properties were listed at a discount in excess of the maximum allowable. Properties currently listed as such were corrected. Even though three properties sold with the incorrect listing, no losses were incurred by VA as a result. Other action items included:

- Take corrective action of cases listed on quality review.
- Conduct ongoing training with Veterans Services Division regarding certificates of eligibility.
- Establish controls to ensure that all information directives are received and disseminated to section chiefs.

Personnel

A new Personnel Officer is about to arrive on station. Some of the concerns listed during the survey were:

- Ensure that mid-year performance reviews are documented in all cases on proper form.
- Ensure supervisors have received proper supervisory training.
- Include the factor level and point values on all copies of the position description for positions under FES standards.
- Review the position of Loan Specialist to determine the appropriateness of its grade.

Finance

Most of the Finance report deals with relatively minor concerns. It is important to note there were no negative findings in Mortgage Loan Accounting and Voucher Audit.

- Purchases of WANG equipment, office equipment, and expendable furniture should be costed in proper accounts.
- Prompt action should be taken on Bills of Collection that have been outstanding for an excessive period of time.

Administrative Services

The Regional Office is neat and orderly. A good division has become better since the last survey. Some of the action items are:

- Purchase new date stamps for all applicable employees that will identify the mail clerk stamping the mail.
- Validate SQC reviews in CTA semi-annually.
- Ensure all records stored in the inactive records storage area are properly identified.
- Review and update division circulars.

Veterans Services Division

VSD has a talented and well motivated staff. They have enormous workload, as indicated by their telephone and personal interviews (which annually equal one-half of the island's veteran population). Personal interviews are exceptionally heavy. However, the Veterans Services Officer has improved some areas in his short tenure of less than six months. Timeliness has improved also, but is still not in conformance with program requirements.

- The Fiduciary Activity is seriously out of line with timeliness a major problem.
- Process Veterans Assistance Inquiries more timely.
- Improve SQC reporting and timeliness in telephone interviews, VAI's, correspondence, and FF&E activities.

Vocational Rehabilitation and Counseling

This division overall is excellent. While the number of rehabilitations are down, causing concern, the division is doing an excellent job in its mission in Puerto Rico. Also noted was the excellent use of Target and WANG systems. Action items include:

- Develop an Individualized Employment Assistance Plan at least 60 days prior to the end of training for each Chapter 31 trainee.
- Review all cases in Interrupt status over 365 days and take action to reduce where indicated.
- Refer non-entitled Chapter 31 veterans to other rehabilitation resources.

VA REGIONAL OFFICE
ST. LOUIS, MO
JANUARY 13 - 17, 1992

EXECUTIVE SUMMARY

All areas of operations were reviewed at the St. Louis VARO. The only area of program concern was Loan Guaranty where over 13 recommendations were made. Many of the recommendations were procedural in nature, and four of them were closed before we left the station. Areas needing the most attention included Property Management and Loan Service and Claims. The station is not meeting sales goals, and there are significant delays in cutting off interest on GI loans six or more months delinquent. These findings were well received by station management, and the survey specialists from Loan Guaranty Service anticipate significant improvements in both of these areas before the end of the fiscal year.

The findings in the other program areas were mostly procedural in nature. Only a limited number of recommendations were made; many of them were closed during the survey week. The other recommendations remaining open could be easily corrected in a short period of time. Overall, program requirements are generally being accomplished in an efficient manner. Good controls are in place and Division Chiefs receive good support for their programs from station management.

Throughout the week, the Director complained about the lack of resources/support to carry out all of the functions assigned to his station. He was extremely disappointed with the approved funding for Chapter 30, the lack of ADP support, and the practical utility of DOOR. While we were unable to address these concerns during the survey week, all of them have been shared with the appropriate CO elements.

There were some problems with the union and one service organization (DAV). The working relationship with DAV needed improvement and there were extensive activities with the union. The Director indicated that he would work to improve both of these areas. Individual program summaries are as follows:

Compensation & Pension

No major findings. Recommendations and suggestions included the following:

- Review and record SQC cases the same month they appear on the QCRE list.
- Install a silent alarm button and a sight panel in the hearing room.
- Check search mail regularly and refer old unresolved mail to unit chiefs.

Education

No major findings. Recommendations and suggestions included the following:

- Expand SAO on "Check Verification" and improve the quality of other SAOs.
- Use VACO SQC exceptions as a basis for refresher training.
- Review pending EPs in Target to ensure that compliance surveys are completed timely.

2.

Executive Summary—VARO St. Louis SurveyLoan Guaranty

The most significant findings in this area were mentioned on the previous page. Other recommendations and suggestions included the following:

- * Conduct periodic followup on Portfolio loans in bankruptcy.
- * Discontinue offering an across-the-board discount for cash sales.
- * Improve coding procedure to ensure correct input into PMS.
- * Establish new loans in PLS within 17 calendar days after closing.

Veterans Services

No major findings. Significant recommendations/suggestions included:

- * Strengthening the training program to meet all needs of employees.
- * Improving the accuracy of AMIS/DOOR reporting and the quality of SAOs.
- * Sending out interim responses to PA/FOIA requests within 10 work days.
- * Strengthening the quality assurance program and SQC practices.

Vocational Rehabilitation

No major deficiencies. Significant findings included the following:

- * Provide timely orientation to clients entering rehabilitation services.
- * Improve the services provided in the rehabilitation planning process.
- * Properly place veterans into interrupted status and followup as needed.
- * Provide comprehensive employment services to veterans and develop fully documented closure statements.

Administrative Services

No major findings. Recommendations and suggestions included the following:

- * Use only lines typed by CTA for DOOR reporting and for SQC review.
- * Conduct annual reviews of outgoing correspondence and pattern library.
- * Destroy form letters no longer needed and use the stock control card.

Finance

No major deficiencies. Significant findings included the following:

- * Maintain contract file and school catalogs in the Finance Division.
- * Do not pay large retroactive awards without authorization from the AO.
- * Get a deviation from CO for using the station's developed COWC Program.

Personnel

No major findings. Recommendations and suggestions included the following:

- * Update PDs over 6 years old and justify Supervisory Attorney position.
- * Provide training on investigative techniques to EEO counselors.
- * Improve audit trail for disciplinary actions and keep evidence files.

VA REGIONAL OFFICE
ST. PETERSBURG, FL
MARCH 9 - 13, 1992

EXECUTIVE SUMMARY

All areas of operations were reviewed at the St. Petersburg VARO. The only two areas of program concern were Finance and Loan Guaranty where over 35 recommendations were made. In Finance, most of the recommendations were procedural in nature. However, one major finding dealt with using prior year funds and establishing a fictitious account receivable for \$9,400.00. The money resulted from a U.S. Postal Service refund due to CO, and was not owed to the station. The funds were used to buy equipment and furniture for the RO. Other areas in Finance needing attention included reconciliations, processing of various vouchers, and cost accounting.

The Loan Guaranty Division is having problems meeting some of their timeliness standards (payment of GI claims and taxes, processing of NODs, NOIs, and Certificates of Eligibility). While several of these findings were repeats from the last survey, the survey specialists from Loan Guaranty indicated that significant improvements had been made. Because of the improvements, no followup survey by the Service would be required as it had been in the past. These findings were well received by station management, and the Director indicated that they would intensify efforts to make further improvements.

The findings in the other program areas were mostly procedural in nature, and only a limited number of recommendations were made. Overall, program requirements are generally being accomplished in an efficient manner. Good controls are in place and Division Chiefs receive excellent support for their programs from station management. However, a major problem facing the RO is a dwindling workforce with an increasing workload. During FY 1992, the staffing level will be reduced from 637 FTE to 545 (a loss of 92 FTE). During the time of the survey, a high level of service was still being provided. However, considering the staffing reduction along with our program findings, the level of service will likely diminish if the workload continues to increase.

The station has a very active union, but is not encountering major problems in dealing with the various union officials. There were no problems with the service organizations. Individual program summaries are as follows:

Compensation & Pension

No major findings. Recommendations and suggestions included the following:

- ° Select QCRE samples in accordance with M21-4 random sampling procedures.
- ° Show audit trails for EPs (172, 174, 120) relating to appeal processing.
- ° Use EP 135 as a diary control for hospital reduction actions.

Education

No major findings. Recommendations and suggestions included the following:

- ° Perform the SAO on Workflow/Use of Management Controls semi-annually.
- ° Select SQC cases on a random basis and properly report them in DOOR.

2.

Executive Summary---VARO St. Petersburg SurveyLoan Guaranty

The most significant findings in this area were mentioned on the previous page. Other recommendations and suggestions included the following:

- ° Review Diary Action List and update cases as appropriate.
- ° Stop authorizing payment for acquisition without acceptable title.
- ° Review and document the Authorization Control Register.
- ° Review workload data and correctly code borrowed/loaned time in DOOR.

Veterans Services

No major findings. Significant recommendations/suggestions included:

- ° Ensuring that District Counsel review Court-appointed fiduciary PGFs.
- ° Improving the accuracy of DOOR reporting and the quality review of PGFs.
- ° Reviewing FBS master records to ensure proper indicators are in use.

Vocational Rehabilitation

No major deficiencies. Significant findings included the following:

- ° Provide due process notifications to veterans in cases of adverse actions.
- ° Ensure that a comprehensive initial evaluation is completed in every case.
- ° Address all issues identified during initial evaluation in the IWRPs.
- ° Conduct and document annual reviews of all written rehabilitation plans.

Administrative Services

No major findings. Recommendations and suggestions included the following:

- ° Update SAO procedure to ensure that all required areas are covered.
- ° Route revised and newly created forms and form letters through the PCO.
- ° Arrange inactive storage area to facilitate record retrieval/destruction.

Finance

The most significant findings in this area were mentioned on the previous page. Other recommendations and suggestions included the following:

- ° Date stamp all accounting documents when received in Finance.
- ° Write off all debts under \$25.00 and those debts that are uncollectable.
- ° Refrain from paying bills before they are due (Prompt Payment Act).
- ° Maintain Time and Attendance Reports properly.

Personnel

No major findings. Recommendations and suggestions included the following:

- ° Document PMRS coverage determination on the cover sheet of the PD.
- ° Revise circular on Incentive Awards to clarify performance award criteria.
- ° Route performance standards through the PO for a technical review.

VA REGIONAL OFFICE
DENVER, CO
MARCH 2 - 6, 1992

EXECUTIVE SUMMARY

A VBA consolidated survey was conducted at the Denver Regional Office March 2 through 6, 1992. All areas were reviewed. Overall, the survey specialists found a regional office staff that works well together and has continued to improve its operations since the last survey. The quality of work and high regional office morale were due in no small measure to the Director's policy of openness of communications.

No major findings were cited. Recommendations and suggestions listed in the survey report can be described as "fine tuning." One program, Loan Guaranty, remarked about how far the operation has come under the current management team. Other areas, despite a high number of trainees, are handling the workload and making sound decisions through hard-work and dedication. This has resulted in an impressive turnaround of claims processing timeliness.

It should be noted, however, that management raised concerns about the added pressure COVA is imposing on rating specialists. Additionally, there is continued disagreement between station management and Veterans Assistance Service over veterans benefits counselor coverage at the VA Medical Centers Fort Lyon and Grand Junction, Colorado. The Program is recommending at least minimum coverage at those locations but if the station cannot comply, it should request a waiver from the requirement. Station management, on the other hand, believes that sufficient services are being provided. Findings include:

Compensation & Pension

- ° Update the Notice of Disagreement Tracking System record to show the claimant failed to file a substantive appeal at the expiration of the 60 day time limit.
- ° Develop for earlier effective date under the authority of 38 CFR 3.114(a) when assigning effective dates on initial grants of service-connection for POW disabilities awarded under the presumptive law provisions.
- ° Input SIRS data on related death claims.
- ° Prepare a memorandum for file following a proposed administrative error decision.

Education

- ° Send certifications which report reductions and terminations from Finance to Adjudication.
- ° Annotate certifications with the date of input into Target.
- ° Cover more than one month in the Systematic Analysis of Operations on check verification.

Loan Guaranty

- ° Review causes for delays in processing and take corrective actions to improve the timeliness of certain end products.
- ° Ensure that Notices of Intention to Foreclose are processed within 10 calendar days after receipt by VA.
- ° Ensure that coding is timely and properly entered into the Portfolio Loan and Property Management Systems.

Veterans Assistance

- ° Provide the minimum required VBC service to the patients at the Grand Junction and Ft. Lyon VAMCs or request a waiver.
- ° Improve the access to the VSD Personal Interview Activity to handicapped persons, and expand the posted hours of operation to include the full business day.
- ° Assure that SQC samples for timeliness and quality in all VSD activities are properly selected, reviewed, reported, and validated.

Vocational Rehabilitation

- ° Provide comprehensive initial evaluations of veterans prior to making entitlement determinations.
- ° Conduct a comprehensive review of the rehabilitation plan at least once a year.
- ° Provide veterans due process prior to taking an adverse action.

Administrative Services

- ° Implement the random sampling procedures when conducting SQC reviews. (Centralized Transcription and Loan Guaranty files activities).

Finance

- ° Keep petty cash purchases of "undistributed supplies" to a minimum and charge to the correct sub-account.
- ° Establish obligations on a monthly basis.
- ° Ensure that proper documentation to support the transfer of accountability is prepared and forwarded to the Department of the Treasury.

Personnel

- ° Review, determine plan of action, and implement the new agency policy on position classification.
- ° Develop a station circular on the Performance Management program that covers all employees.

VA REGIONAL OFFICE
BALTIMORE, MARYLAND
FEBRUARY 24 - 28, 1992

EXECUTIVE SUMMARY

A VBA consolidated survey was conducted at the Baltimore Regional Office the week of February 24 - 28, 1992. The survey team noted improvement in virtually all areas of program operations since the last survey. In some areas, the improvement was dramatic. The Budget and Finance staff member did not participate in the survey, but came with the team as a followup to prior "help-team" visits to validate that the RO Finance Section was still on the right track. Over the past few years, Budget and Finance Staff has invested a significant number of manhours providing fiscal assistance to the section. Although there remains much room for improvement, the staff seems to have a handle on what needs to be done and is working towards doing it. If the section is able to stay focused, the next survey should show marked improvement in that area.

The most significant survey issue was the deteriorating relationship between the VR&C Officer and the Director which was creating program problems and negatively affecting division performance. The survey team members, while on station, noted significant weaknesses in division management contributing to the degradation of service in that program area. Also, they noted that the Director could be better informed of operations in the VR&C Division.

The findings in the other program areas were mostly procedural in nature. Overall, program requirements are generally being accomplished in an efficient manner. Controls are in place and division chiefs receive good support for their programs from station management. Communications among division chiefs and with station management (with the exception of the VR&C Officer) are good. There were no problems with the service organizations or union. Individual program summaries are as follows:

Compensation & Pension

No major findings. Recommendations and suggestions included the following:

- Select SQC cases (rating/authorization) in accordance with instructions.
- Revise performance standards for adjudicators and development clerks.
- Amend WIPP User Plan to include search procedures for EP 600 (Due Process).
- Ensure that the first claims folder in the file drawer corresponds to the label on the drawer.

Education

No major findings. Recommendations and suggestions included the following:

- Establish procedures for validating the supervisors' findings on SQC.
- Conduct training on basic eligibility issues, emphasizing chapter 106.
- Annotate the compliance survey reports to show EP completion and clearance.
- Establish procedures for getting SAA invoices to Finance and for ensuring timely payment.

2.

Executive Summary—VARO Baltimore SurveyLoan Guaranty

No major deficiencies. Significant findings included the following:

- Continue to improve the processing of NODs and NOIs.
- Ensure that GI claims are processed within the 30 day timeliness standard.
- Review, update, and use the Serious Default Action List on a monthly basis.
- Intensify efforts to achieve VBA sales goals, and ensure that a "For Sale" sign is on each VA property listed for sale.
- Perform required supervisory reviews of GI loans 6 or more months delinquent and Portfolio Loans that are 4 or more months delinquent.

Veterans Services

Significant findings in this area included the following:

- Improve reporting of SAOs, Quarterly Briefings, and Supervisory Visits.
- Improve SQC program, specifically VAMCs, F&FE, and Equal Opportunity.
- Monitor work study hours to ensure timely increase of allocated hours.
- Review personnel utilization to ensure efficiency within the division.

Vocational Rehabilitation

The most significant findings in this area were mentioned on the previous page. Other recommendations and suggestions included the following:

- Provide a thorough, comprehensive evaluation to all veterans potentially entitled to vocational rehabilitation.
- Purchase an electronic scanner to speed the scoring of tests.
- Provide and document comprehensive employment services to veterans.
- Expand and continue to implement DTAP.

Administrative Services

No major findings. Recommendations and suggestions included the following:

- Establish a local Records Management program.
- Ensure that all workload counts are accurately reported.
- Ensure that PA/FOIA mail is identified, date stamped, and boldly annotated.
- Process properly cash remittances and negotiable instruments.
- Establish a schedule to conduct semiannual reviews of division stock.

Finance

This area was not reviewed. However, comments regarding this area are contained on the previous page.

Personnel

No major findings. Recommendations and suggestions included the following:

- Establish IDPs for VRA appointees with less than 15 years of education.
- Conduct PMEs and SAOs to assess personnel program effectiveness.
- Revise the organizational charts for the Director's office and Admin.
- Publicize the employee suggestion program to encourage participation.

VA REGIONAL OFFICE
NEW ORLEANS, LOUISIANA
APRIL 6 - 10, 1992

EXECUTIVE SUMMARY

A VBA consolidated survey was conducted at the New Orleans Regional Office the week of April 6-10, 1992. Overall, station operations were good. In Adjudication and Loan Guaranty, improvement was noted in all areas. It was apparent that the Director has made these divisions a station priority. The station has expended a great deal of effort to computerize much of the Loan Guaranty operation through the very effective use of a LAN system. This has allowed the division to make great strides over the past few years. The division excelled in all areas except Loan Service and Claims where improvement was noted, but there were still some program weaknesses.

The Adjudication Division is currently testing a Voice Recognition System. This technology allows a rating specialist to dictate a rating directly into a computer which immediately transcribes it. Although this test is just in its beginning stages, the technology holds great promise for future implementation.

The significant program issues related to inadequate staffing in the Veterans Assistance Section (VSD), the Shreveport outbased office of the Vocational Rehabilitation and Counseling Division (VR&C), and the Loan Service and Claims Section (LGY). The regional office has suffered from the Southern Area hiring freeze and the abnormal number of unexpected vacancies in VSD has essentially crippled the Veterans Assistance Section. The Director has tried to meet the resource needs of the operating divisions (e.g., Adjudication and Loan Guaranty), and has taken staff from VAS to accomplish this. The untimely deaths of two of the VBCs shortly before the survey exacerbated an already poor situation. In VR&C, the Shreveport office has been unable to effectively implement DTAP and is failing to meet other key program requirements due to the inadequate staffing. VR&C staffing at the regional office appears adequate to meet program requirements, but insufficient to provide additional support to the Shreveport office. The station has effectively used work-study students wherever possible to augment the available staff.

The findings in the other program areas were mostly procedural in nature. Program requirements are generally being accomplished in an efficient manner and good controls are in place. Individual program summaries are as follows:

Compensation & Pension

No major findings. Recommendations and suggestions included the following:

- Follow proper procedures for folder transfer-in requests.
- Maintain copies of SIRS ratings for a 2 year period.
- Rotate rating board digit assignments approximately every 6 months.
- Broaden the search requirements to incorporate the actual search procedures used by division WIPP reviewers.

Education

No major findings. Recommendations and suggestions included the following:

- Resume the drop-filing of Target generated education award letters.
- Remove material over 7 years old from school approval files.
- Ensure that SAOs are written as frequently as required by M22-3 manual.
- Send the ELR to VARO Little Rock for additional training.

- Review all cases in Interrupt case status over one year.
- Enable outbased CP and VRS staff electronic access to Target and WANG.

Compensation and Pension:

Overall, the Adjudication Division is well run and provides excellent service. Some of the areas that will appear in the final report are:

- If end products cannot be cleared, ensure that all WIPP reviewers annotate a permanent portion of the claims folder.
- Ensure that follow-up action is taken to accomplish processing of homeless veterans' claims within 30 days.

Education:

- Ensure only one end product is recorded when one or more action is taken in a single day (EPs 850 and 860).
- Establish a pending issue on every claim that cannot be worked without the claims folder.

Loan Guaranty:

Loan Guaranty has shown improvement from the previous survey and has no major problem areas. The division is sound and Loan Service and Claims Section has no action items whatsoever. Action items include:

- Comply with circular and set the fee for credit reports produced on station at a rate which covers the basic cost of the report.
- Ensure post audit reviews are filed in the lender's file.
- Continue efforts to achieve the VBA sales goals of 105% sales to acquisition ratio.
- Comply with guidelines which require treatment of defective paint surfaces on residential properties prior to occupancy.

Personnel:

Overall, the Personnel Division is well run and action items mentioned will strengthen the program. Most items were closed on station, but of those which remain, the most noteworthy are:

- Establish a review process to ensure regulations are consistently followed in referring Vietnam veterans.
- Establish a review process to ensure merit promotion requirements for referral of promotion and reassignment of candidates for multiple-grade level positions are followed.

Veterans Services:

The Veterans Services Division is well run and efficient. It is well managed and service provided to the veterans in Wisconsin is outstanding. Their TQM monitoring initiative is clearly in violation of VAS requirements. Some of the few items mentioned on the action plan, including the monitoring issue, are:

- Conduct service observation of telephone activity interviews in accordance with requirements.
- Obtain signed Statements of Assurance from proprietary NCD facilities as necessary prior to assigning facility code.

Administrative:

The Administrative activity of Support Services Division runs well, but there is a backup in CTA dictation. One employee was presented a dismissal letter during the survey week and another is about to receive one. These personnel actions have consumed much of the chief's time and has adversely impacted on the functioning of the division. However, with the completion of these personnel actions, improvement will be forthcoming. Some of the action items are:

- Ensure that correspondence released is of the highest quality possible.

(Note: This item incorporates the problems identified with

the lack of quality work provided by the two employees mentioned above.)

- Ensure that as much mail as possible is opened and date-stamped in the mailroom.
- Ensure that cash and negotiable instruments are processed in accordance with current directives.
- Discontinue counting intraoffice mail.

VA REGIONAL OFFICE
AND INSURANCE CENTER
ST. PAUL, MN
AUGUST 3 - 7, 1992

EXECUTIVE SUMMARY

All areas of operations were reviewed at the St. Paul VARO&IC, except Debt Management. There were significant findings in Loan Guaranty and Vocational Rehabilitation. In Loan Guaranty, over 15 recommendations were made. Many of the recommendations were procedural in nature. However, tax penalties in excess of \$15,000.00 were paid for last year. Survey specialists from Finance and Loan Guaranty indicated that a better system is needed for paying taxes as well as more instructions/annotations on the bill itself. The divisions are now working together to resolve this problem. In Vocational Rehabilitation, division morale was cited as a problem. It was recommended that the VR&C Officer provide ongoing activities to reduce interpersonal conflicts, and consult with the VAMC for free team building training from Psychology Service.

DOOR reporting and the use of OLQ were concerns expressed by division and station management. The accuracy of the reports were cited as problems in three divisions. During the mid-week briefing, the Assistant Director indicated that he and his staff were having extreme difficulties with using OLQ and DOOR. As a result, more OLQ and DOOR training is being contemplated.

Overall, program requirements are generally being accomplished in an efficient manner. Good controls are in place, and division chiefs receive excellent support for their programs from station management. Communications among division chiefs and with station management are exceptional. Also, the station has an excellent working relationship with service organizations and the union. Individual program summaries are as follows:

Compensation & Pension

No major findings. Recommendations and suggestions included the following:

- ° Use EP 960 and reason code 39 for administrative error awards.
- ° Report SQC reviews in the month the sample cases are selected.
- ° Identify period and place of POW internment on POW claims folders.

Education

No major findings. Recommendations and suggestions included the following:

- ° Expand the case size and the number of months for validation of local SQC.
- ° Review and refer retroactive awards in excess of \$1000.00 to Finance.
- ° Enter the drop date in the On-Line Approval File if provided by the school.

Loan Guaranty

The most significant finding in this area was mentioned above. Other recommendations and suggestions included the following:

- ° Authorize acquisition vouchers and forward them to Finance within 5 days.
- ° Review Authorization Control Register and resolve outstanding items.
- ° Follow established procedures for payment of sales commissions and bonuses.

2.

Executive Summary--VARO&IC St. Paul SurveyVeterans Services

Only two recommendations were made; they included the following:

- ° Continue the improvement in SQC reviews of Principal Guardianship Folders.
- ° Obtain Statement of Assurance of Compliance with Equal Opportunity Laws for all assigned facility codes.

Vocational Rehabilitation

The most significant finding in this area was mentioned on the previous page. Other recommendations and suggestions included the following:

- ° Document fully each case placed into rehabilitated case status.
- ° Review award processing and provide for authorization by a second person.
- ° Document initial evaluations of veterans found not entitled to VR service.
- ° Analyze the workload in Duluth and see if an outbase CP/VRS is needed.

Insurance

No major deficiencies. Significant findings included the following:

- ° Stop splitting a policy into two in order to process it using ADP systems.
- ° Use the telephone to obtain information rather than sending a letter.
- ° Place greater controls on cross functional teams to ensure integrity.
- ° Acquire a locator service to save time and improve customer service.

Administrative Services

No major findings. Recommendations and suggestions included the following:

- ° Use Stock Control Card to identify replenishment levels of station stock.
- ° Review local forms, form letters, and overprints during the annual review.
- ° Discontinue reporting intraoffice mail as incoming mail in D00R.
- ° Establish local procedures to validate completed work counts in the CTA.

Finance

No major deficiencies. Significant findings included the following:

- ° Update Target screen to show payments issued for Adaptive Housing.
- ° Discontinue paying bills before they are due (Prompt Payment Act).
- ° Ensure that the FO countersigns Trial Balances and keep originals of TDAs.
- ° Post time and attendance on a daily basis, and annotate VAI log properly.

Personnel

Only two recommendations were made; they included the following:

- ° Document FLSA determinations for supervisors on PD cover sheet (OF-8).
- ° Ensure that the reason for resignation listed on the SF-52 corresponds with the one placed on the SF-50.

EXECUTIVE SUMMARY

VARO
LINCOLN, NE
JUNE 15-19, 1992

VBA conducted a consolidated survey at VARO Lincoln from June 15-19, 1992. Areas reviewed by team members were station management, compensation & pension, education, veterans' services, loan guaranty, vocational rehabilitation, administrative services, budget & finance, and personnel.

Overall, the station was found to be well managed and functioning in an effective and organized manner. Since the last survey in February 1990, the station has experienced a turnover of several senior managers. The net effect of these changes has clearly been to the benefit of the station. Many good operational efficiencies were found during the survey, along with several problems. Notable areas, by program, are cited below.

Station Management

No recommendations or suggestions. Prior survey had one recommendation. A 100 percent improvement.

The key element in the reviews of topical managerial concerns was the high level of improvement since the last survey and the commitment to service expressed by both station and division management.

Compensation & Pension Service

Six recommendations (no repeats) and no suggestions. Previous survey had 10 recommendations (4 repeats) and 4 suggestions (no repeats). A 57 percent improvement.

Recommendations centered on:

- ° use of the WIPP User Plan,
- ° establishing and maintaining appropriate end product controls,
- ° appropriate filing of locally generated letters, and,
- ° informing former POWs by dictated letter of the establishment or modification of serviced connected disability claims.

Education Service

Two recommendations (1 repeat) and no suggestions. Previous survey had 5 recommendations (no repeats) and 1 suggestion (no repeats). A 67 percent improvement.

Recommendations concerned:

- ° establishing compliance surveys as pending issues in TARGET (closed on station), and,
- ° improving the rate of referrals of large retroactive chapter 106 checks to Finance for verification (the repeat recommendation).

Loan Guaranty Service

Ten recommendations (no repeats) and two suggestions (no repeats). Previous survey had 15 recommendations (no repeats) and 4 suggestions (no repeats). A 37 percent improvement.

Recommendations covered:

- update and maintain the: division library, and, the airport files,
- review time sensitive materials and ensure they are datestamped,
- implement corrective actions to VACO taken SQC exceptions as well as review causes for delays in processing (timeliness),
- review lender activity reports and monitor lenders performance,
- ensure cash discounts offered on VA sales do not exceed 5 percent,
- obtaining advice from the District Counsel on listing properties for sale prior to having absolute title,
- ensuring staff field review requirements are accomplished within established time frames, and,
- ensuring that bid solicitations contain appropriate legend concerning lead-based paint.

Veterans Assistance Service

Five recommendations (2 repeats) and no suggestions. Previous survey had 8 recommendations (no repeats) and 3 suggestions (no repeats). A 55 percent improvement.

The recommendations concerned:

- identification and documentation of quality errors found in telephone interviews, PGFs and VALs, (REPEAT) and,
- acquisition of a correct sample for quality and timeliness reviews (REPEAT),
- PA/FOIA documentation,
- letters used in the Work Study program, and,
- conducting timely audits of the initial appointment field examinations and accounts.

Vocational Rehabilitation Service

Five recommendations and one suggestion (no repeats). Previous survey had 3 recommendations (no repeats) and no suggestions (no repeats). A 100 percent worsening.

Areas cited were:

- documentation of decisions on VAF 28-1902b,
- development of IWRPs specific to each veteran's situation,
- establishing and conducting annual reviews on IWRPs,
- developing IEAPs which reflect the participant's specific circumstances, and,
- providing due process prior to taking adverse action.

Personnel Assistance Staff

Eight recommendations and one suggestion (no repeats). Previous survey had 12 recommendations (no repeats) and 3 suggestions (1 repeat). A 47 percent improvement.

Findings were in the areas of:

- ° rewriting of several position descriptions,
- ° inclusion of EEO responsibilities in one supervisory performance standards,
- ° conducting a 10 percent desk audit every year,
- ° updating station circular on classification,
- ° scheduling Phase III new employee orientation within 90 days of appointment, and,
- ° including all appropriate documents in merit promotion files.

Budget and Finance Staff

Five recommendations (no repeats) and no suggestions (no repeats). Previous survey had 8 recommendations (no repeats) and 1 suggestion (no repeats). Four of the recommendations were closed on station. A 44 percent improvement.

The remaining recommendation concerned:

- ° ensuring that employees designated certifying officials were not also assigned as agent cashier or alternate.

Administrative Support Staff

Four recommendations (no repeats) and 5 suggestions (no repeats). Prior survey had 8 recommendations (one repeat) and 9 suggestions (no repeats). A 47 percent improvement.

Recommendations concerned:

- ° ensuring all local forms are logged through VAF 70-559,
- ° ensuring station PCO approves all station paragraphs and pattern letters,
- ° ensuring that SAOs cover all appropriate areas, and
- ° maintaining current delegations of authority.

EXECUTIVE SUMMARYLittle Rock Survey
(August 17 - 21, 1992)

The Little Rock survey was conducted in the normal manner for consolidated surveys. All represented program areas performed their reviews and audits in a professional manner.

It is evident that this is a well-managed, well-run office, staffed by competent, committed people who are providing quality service in a timely manner. Survey specialists complemented the support staffs on their work and professionalism. The team spirit evident in this station is directly due to the intimate involvement of the Director and Assistant Director in the operations of the station.

There were no repeat findings from any service.

The most contentious finding is a recommendation from the Budget and Finance Staff regarding Little Rock's atypical organization in the area of employee accounts. Little Rock maintains employee accounts in the Personnel activity, rather than in the Finance activity, and has moved an individual from Finance to Personnel for that purpose. Essentially, the station believes that they have control of any potential conflicts, and have permission from the area office to continue in the current format. The survey specialists feel that there is a compromise of the integrity of internal controls.

Additional findings are:

Compensation & Pension:

Exploring the possibility of shifting the unit chief review of pending claims from column E to column D of the WIPP W10 screen. This would potentially improve the stations timeliness by providing for a supervisory review 30 days earlier.

Exploring the possibility of amending performance standards for claims examiners and rating specialists to focus more on quality and timeliness and less on productivity.

Education:

Performing a detailed analysis of chapter 35 timeliness in the station SAO on timeliness. Nationally, chapter 35 claims are approximately 8 percent of the total original claims, while at Little Rock, the chapter 35 percentage is over 20 percent. (Education Service is conducting a study to identify why national timeliness on chapter 35 cases is below the standard of 80 percent within 30 days.)

Loan Guaranty:

Reviewing the Lender Activity Reports to identify lenders with higher than average liquidation and foreclosure rates, and then ensuring that appropriate procedures are followed to monitor their performance.

Veterans Assistance:

None.

Vocational Rehabilitation:

Consider initiating a Master Degree level internship program to assist the staff member at the Fayetteville outbased office. The individual located there is alone, and carrying a considerable workload.

Personnel Assistance:

Improve notifications on merit promotion certificates to identify preferential eligibility situations, and on announcements of supervisory positions to identify the existence of a 1-year probationary period.

Budget and Finance:

In addition to the recommendation cited at the beginning of this narrative, there was a finding that the Finance Officer is not certifying one time payments IAW regulations. However, the payments were noted to be correctly and properly done.

Administrative Support:

Most important element discussed revolved around the inactive files area and its management and access, i.e. access is not completely controlled. Additionally, There are Loan Guaranty files that are eligible for retirement but have not been selected.

VA REGIONAL OFFICE
DES MOINES, IA
JULY 20-24, 1992

EXECUTIVE SUMMARY

A VBA consolidated survey was conducted at the Des Moines Regional Office during the period July 20 - 24, 1992. All areas were reviewed and no significant program deficiencies were found. No findings were repeated from the previous survey of early 1990.

It is evident that this is a well-managed, well-functioning Regional Office staffed by competent, committed people who are providing quality service in a timely manner to Iowa veterans and their dependents. Program survey specialists were highly complementary of the work accomplished in their respective areas. Many of them remarked about how the divisions work with and support each other. This spirit of teamwork is fostered, in large measure, by the Director and Assistant Director.

Noteworthy areas include: the establishment of a separate training unit in Adjudication that not only provides instruction to a large number of trainee claims examiners but is also productive. The Division has an excellent work control plan. At that time, their percentage of cases pending over 180 days was the second lowest in the nation. The Loan Guaranty representatives found that a considerable amount of field servicing was being extended to GI and portfolio loan homeowners. Additionally, the office had just recently celebrated the opening of an outbased Vocational Rehabilitation office in Davenport. The outbased location is staffed by personnel from both Des Moines and Chicago Regional Offices.

Some of the survey findings include:

Adjudication: The recommendations concerned mostly outgoing letters to the public; e.g., avoid using technical jargon, ensure that letters clearly identify issues considered and contain the proper appeal information as required by BVA.

Education:

- * Establish an end product control for education compliance surveys.
- * Amend the established procedures for selecting education cases for quality review.

Loan Guaranty:

- * Enhance enforcement of fee appraiser timeliness requirements in order to meet timeliness goals for issuance of Certificates of Reasonable Value and liquidation determinations of value.
- * Ensure that new loans are fully established in the Portfolio Loan System within 17 days after sales closings.
- * Establish a tracking mechanism to ensure that the minimum requirements for staff reviews of management broker performance are accomplished.

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Veterans Assistance:

- ° Conduct valid quality control reviews in the Fiduciary and Field Examination Activity.
- ° Permanently post the hours of operation at the entrance to the Division.

Vocational Rehabilitation:

- ° Give Chapter 31 applicants an appointment with a VA counseling psychologist prior to sending them to a contractor for evaluation or testing services.
- ° Review and follow instructions for accomplishing the Division's quarterly Quality Review of casework.

Finance: Ten recommendations were made, five of which were closed at the time of the survey. The rest concerned the reconciliation of certain accounts, follow-up action on specified CALM Reports, and payment of certain management broker bills in accordance with the Prompt Payment Act. In the latter case, they were cited for paying the management brokers too quickly.

Administration:

- ° Maintain current copies of the zip code directory.
- ° Validate centralized transcription activity workcounts.

Personnel:

- ° Ensure that only those employees entitled to veterans preference receive it.
- ° Establish procedures to ensure that temporary employees are not given promotions.
- ° Establish a procedure to ensure that all background investigations for employment are initiated within 7 days after placement.

ROANOKE REGIONAL OFFICE EXECUTIVE SUMMARY

The consolidated survey of the Roanoke Regional Office was conducted August 31, 1992 through September 4, 1992. All areas of the RO were surveyed.

Overall, the Regional Office is well run and has a committed and experienced staff. There were some areas that are pressed because of the heavy and increasing workload. Station management was very receptive to the findings of the survey.

Individual program summaries are as follows:

Compensation and Pension

Timeliness has been good and quality of work has improved. The Adjudication Division is getting their job done with the minimum of staff. The Adjudication Division is a well managed division. The survey suggested that the files activity be supervised by the Adjudication Officer.

Some of the recommendations are:

- ▷ Ensure that initial development of the WIPP user plan is complete.
- ▷ Amend the WIPP user plan to include claims establishment.
- ▷ Remind all division employees to review all letters for accuracy.

Education

Overall the Education activity at the Regional Office is well run and efficient. There were no recommendations offered.

Loan Guaranty

Increased workload is the most important factor in the Loan Guaranty Division. However, inexperienced staff has provided challenges for the Division. Some of the major recommendations are:

- ▷ Analyze processing steps and eliminate duplication of work.
- ▷ Correct SQC defects.

- ▷ Establish procedures to ensure that real estate taxes are paid timely.
- ▷ Ensure that checks held overnight in Property Management are secured in a locked cabinet.

Veterans Services Division

Workload has increased and the telephone activity is not able to meet its timeliness goals. The quality of service is excellent. There are extraordinary backlogs of work in the Fiduciary section. The division structure reveals an overall lack of supervisors which tends to make managing the division more difficult. Some of the recommendations were:

- ▷ Improve timeliness in the Telephone Interview Activity.
- ▷ Conduct a special study of staffing in VSD needed to maintain minimum standards of quality and timeliness.
- ▷ Conduct quality review control reviews in the F&FE program.

Vocational Rehabilitation

The staff are performing most of their functions in an efficient and effective manner. Counseling decisions are of high quality. Some of the recommendations are as follows:

- ▷ Provide employment services for hard to place veterans by contract.
- ▷ Review and follow instructions for entering cases into interrupted status.

Personnel

The Personnel Division is well managed and has a dedicated staff. There are no recommendations and only two minor suggestions.

Finance

There is an unusually high volume of property sales in loan guaranty which is creating increased workload in accounting and voucher audit. However, overall the Division is well run. Some of the recommendations are:

- ▷ Conduct follow-up on Bills for Collection and reconcile them monthly.
- ▷ Control and clear employee travel advances within five days.
- ▷ Ensure that voucher totals are properly verified.

Administrative

Overall the Division is well run and is quite busy. The files for both Adjudication and Loan Guaranty are under the supervision of the Administrative Division. A number of recommendations are made in this report, including:

- ▷ Ensure that all mail drop points are properly marked.
- ▷ Conduct in-depth semiannual review of division stock.
- ▷ Establish local procedures to identify and recall retired VAR4600 loan dockets.

WHITE RIVER JUNCTION VAM&ROC EXECUTIVE SUMMARY

The consolidated survey of the VAM&ROC White River Jct., Vermont was conducted October 5, through 9, 1992. All areas of the RO were surveyed except for the Vocational Rehabilitation and Counseling Division. All Loan Guaranty cases are handled by the Manchester Regional Office.

The Regional Office portion of the VA operation in Vermont is very well run and few major problems were noted during the survey.

Individual program summaries are as follows:

Compensation and Pension

The Adjudication Division is well managed and accomplished division. There were no problems in areas critical to the function of the division or its service to the veterans of Vermont. There are competent and committed people who provide both timely and high quality service. The recommendations noted in the report are of a procedural nature and will only improve an already excellent division.

Education

Quality is excellent and timeliness is good in education functions within the Veterans Services Division. The few recommendations made were closed while the survey team was still on station.

Veterans Services Division

The quality of service is excellent in the division. The only recommendations are to improve the quality of field examination reports to assure they are adequately documented to support decisions and to properly document quality control samples.

Personnel

The lack of a Personnel Officer on station has hindered the operation yet the overall operation is still good. There are numerous, but relatively minor, items that need to be addressed and appear as recommendations in the report.

ANSWER: The acceptable success rate that has been established for the C&P National Accuracy Program is 97%. This rate is applied for payment accuracy, service and control issues, and notification issues. This rate is an aggressive but realistic goal.

QUESTION 7: How many days did it take to process a claim for compensation benefits in FY '93 and how many days do you expect the process to take for a similar claim in FY '94? Please provide an explanation for any difference in anticipated processing time.

ANSWER: An original compensation claim took an average of 189 days to complete during FY '93. The continued downsizing of the military, an increase in the number of issues per claim, the impact of the Court of Veterans Appeals, the statutory requirements for the contents of decision notices, and the high percentage of relatively inexperienced claims examiners are combining to drive the backlog upward. Our preliminary data indicate that processing timeliness will deteriorate to 226 days in FY '94.

QUESTION 8: According to the VA Inspector General about 1/3 of VA examinations are unusable. Of course, this is contributing to the backlog of cases pending before VBA.

What is being done to correct this situation?

Are VA Medical Center workers canceling examinations in order to meet their timeliness standards?

ANSWER: The Blue Ribbon Panel noted that improvements in the quality of examination reports would benefit claims processing. VBA's concerns about the sufficiency of examination reports will be addressed in a revision of the Memorandum of Understanding (MOU) between VHA and VBA. The MOU will include a provision for a minimum acceptable level of quality. We have no probative evidence that VA medical centers are pursuing actions that improve their timeliness in completing examination reports at the expense of service to veterans.

QUESTION 9: How many RO Directors and how many Adjudication Officers received an outstanding evaluation in the latest evaluation period?

ANSWER: Twenty-seven Adjudication Officers and 26 Directors (5 in merit pay and 21 in the Senior Executive Service) received an outstanding evaluation.

QUESTION 10: Has an RO Director or adjudication officer ever been disciplined for the manipulation of the VBA work-measurement system?

ANSWER: We are not aware of disciplinary action taken against a Director or an Adjudication Officer for this reason.

QUESTION 11: In opposing section 5 of H.R. 3269 and the language of the Administration's proposal, it appears as if VA is seeking additional authority for the Chairman of BVA and circumvent *Judicial Review* of certain matters, such as the assignment of cases to Board members.

Given the battles fought over *Judicial Review* and a veteran's appellate rights, why should the Chairman's authority be increased and any decision by the Board made nonreviewable?

ANSWER: We do not believe that there is any conflict between the concept of judicial review and either (1) VA's articulated opposition to section 5 of H.R. 3269 or (2) sections 3 and 4 of the Administration's proposed "Veterans' Appeals Improvement Act of 1993," forwarded to the Speaker of the House of Representatives on August 13, 1993.

Opposition to § 5 of H.R. 3269

As you know, VA, while supporting the concept of single-member decisions set forth in section 5 of H.R. 3269, had several technical reasons for opposing that section.

First, section 5 of H.R. 3269, while requiring that all proceedings before the Board be assigned to an individual member, does not specify who may assign such a proceeding. Under current law (38 U.S.C. § 7102)--pursuant to which decisions are made by Board sections--the Chairman is authorized to assign proceedings to Board sections. Section 3 of the Administration proposal would (1) continue this specification of authority to assign under a system in which decisions may be made by individuals and (2) assign to the obvious choice--the Chairman--the authority to decide whether decisions will be made by individuals or sections. VA does not view this as "additional" authority for the Chairman, but rather as a logical continuation of the authority which currently resides in that office. In our view, section 5 of H.R. 3269 is unnecessarily silent on this point.

While it is true that the Administration proposal would specifically exempt the Chairman's assignment process from judicial review, such assignments, as non-final procedural orders, are likely unreviewable. The language inserted in the Administration proposal was intended to reduce the possibilities of pointless litigation over what would amount to "forum shopping" within the Board.

Second, section 5 of H.R. 3269 would unnecessarily reduce the authority of the Chairman by removing the authority which exists under current law (38 U.S.C. § 7102(a)(2)(A)(ii)) to appoint acting Board members. Because of the time connected with the unique Presidential approval requirement in connection with Board appointments, 38 U.S.C. § 7101(b)(2)(A), that authority is important to keeping a full complement of Board members working to fulfill BVA's statutory duty to process appeals in a timely manner.

Finally, section 5 of H.R. 3269 would unnecessarily remove the requirement in current law (38 U.S.C. § 7102(b)) that a hearing docket be maintained and that formal recorded hearings be held by the Board member or members who will make the final determination in the appeal. The Administration proposal would preserve those requirements.

VA does not believe that any of its opposition to section 5 of H.R. 3269 conflicts with the concept of a claimant's right to an appellate review of a final decision by the Board of Veterans' Appeals. VA does believe that section 5 would be improved by the addition of the above-mentioned features of the Administration proposal.

Decisions by the Chairman Subject to Judicial Review

The Administration proposal would increase the Chairman's authority by granting him or her the authority to make determinations on matters before the Board. It is the Administration's intent that this authority be employed to enable the Chairman to rule on procedural motions and other matters not requiring extensive familiarity with all the evidence in a case, thereby freeing the other Board members to review and decide cases on the merits. This increase in authority would, of course, be subject to judicial review.

Administrative Allowance

Section 4(c) of the Administration proposal would permit the Chairman or Vice Chairman to revise or amend a Board decision in order to allow a claim in whole or in part, based on a difference of opinion. The decision whether to allow the claim on that ground would be insulated from judicial review.

The purpose of section 4(c) is to permit the Chairman and Vice Chairman to "do equity" in cases in a manner analogous to the authority which the Under Secretary for Benefits holds under 38 C.F.R. § 3.105(b), which permits otherwise final decisions to be revised based on a difference of opinion. Because of the inherently subjective nature of such equitable relief--the proposal stipulates that there is no error in the original decision--and because failure to exercise the discretion provided would never put a claimant in a worse position, the Department believes that it would not be useful to subject this authority to judicial review. If this authority is abused, a

remedy may be had under 38 U.S.C. § 7101(b)(1) and (b)(2)(B). Moreover, it is expected that the exercise of this authority will be subject to Congressional oversight.

QUESTION 12: VA indicated in its November 17, 1993 testimony before the Subcommittee that BVA would have to alter its case-tracking system in order to comply with the reporting requirements of Section 3 of H.R. 3269 and that such changes would cost \$150,179.

Describe why VBA could not collect the relevant data from the agency of original jurisdiction rather than modify BVA's case-tracking system.

Based on VA's November 17, 1993 testimony, what specific changes would BVA need to its case-tracking system? Why are such changes necessary? Fully justify the cost estimate provided for these changes.

ANSWER: The Appeals Tracking System (ATS) provides information for managing individual cases through the appeal process and the ability to identify workflow trends so that, where necessary, corrective action can be taken. Reports required by section 3 of H.R. 3269 would provide delayed information so far removed from the time of the decision that effective management is precluded.

Section 3(a) would require the Secretary to report annually on claims for benefits which became final during the preceding year. Specifically, the Secretary would be required to report the average number of days from the date the claim was received by VA until the claim became final. Within that broad category, those claims--including claims which became final after an appeal to BVA had been filed--would be categorized with respect to whether, among other things, there were or were not hearings at the agency of original jurisdiction.

Currently, the Board tracks all cases from the date a substantive appeal is received. However, because the matter is irrelevant to a BVA decision, the Board does not track whether or not the claimant had a hearing at the agency of original jurisdiction.

While VBA could "collect" the information with regard to hearings at Regional Offices and provide it to BVA (and VHA could do the same for hearings within its system), the information would be of no use in providing the reports proposed under sections 3(a)(4)-(9) until matched with the result of the case at the Board. That is why the case-tracking system at BVA would have to be modified in order to comply with the reporting requirements of section 3 of H.R. 3269.

BVA's case-tracking system does not currently contain information as to whether or not there was a hearing at the agency of original jurisdiction. In order to provide the reports proposed under sections 3(a)(4)-(9), that information would have to be added, which would require a modification of the database to (1) provide a place for that information and (2) make the new information retrievable. In our experience making modifications to databases, such a change would cost approximately \$5,000.

Once the BVA tracking system could contain information with respect to hearings at the agency of original jurisdiction, that information would have to be determined and then entered into that system.

Our cost estimate is based on the assumption that BVA would have to determine whether there was a hearing at the agency of original jurisdiction, and that determination would be made by reviewing the claims file. This kind of research is typically done by paralegals at the Board. We estimate that each such review would consume one-quarter hour of a paralegal's time, at a prorated cost of \$3.70. (Our original estimate, made in October 1993, was based on a quarter-hour charge of \$3.55; since that time, a locality pay increase of 4.23% has gone into effect in the Washington, D.C. area, increasing the cost to \$3.70.) With 39,000 appeals filed each year, we estimate this portion of the cost to be \$144,300.

Thus, the total cost to BVA of changes to its case-tracking system based on the requirements of section 3 of H.R. 3269 would be \$149,300. (The additional amounts would be the annual cost of setting up and running the reports.)

**QUESTIONS SUBMITTED BY
HONORABLE MICHAEL BILIRAKIS THROUGH
HONORABLE JIM SLATTERY, CHAIRMAN,
SUBCOMMITTEE ON COMPENSATION PENSION AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS**

**HEARING ON LEGISLATION AFFECTING
VA ADJUDICATION AND APPEALS PROCESS**

NOVEMBER 17, 1993

QUESTION 1: In connection with the SSA match program, please explain the problems you have encountered in your efforts to secure information from the Social Security Administration.

ANSWER: The only problem encountered is the amount of time taken by the Data Integrity Board at the Department of Health and Human services to approve computer matching agreements.

QUESTION 2: How do you propose to enhance the Automated Medical Information Exchange system to improve claims processing?

ANSWER: During the late summer of 1993, Automated Medical Information Exchange (AMIE) Version 2.5 was installed by all medical centers. This version included enhancements approved by the AMIE Expert Panel (AEP).

VHA management has mandated that the Physician's Guide be included in the AMIE program. A separate work group is working in this project. Inclusion of the Physician's Guide in the AMIE system will improve the quality of examination reports.

Many problems associated with AMIE relate to the WANG platform on which VBA runs the system. Conversion to personal computer (PC) workstations will eliminate many of these problems and provide future capabilities not possible with the WANG-based system. Conversion to the PC environment will increase performance in connectivity, printing capabilities, and overall access.

QUESTION 3: Could you explain what is meant by a "Help Team"?

ANSWER: Essentially, a "Help Team" brings together claims examiners from several different stations to assist in adjudicating claims that overburden the resources of a particular station. This type of effort must be limited to extraordinary situations because it temporarily moves resources from other offices to one that is having significant trouble. It is not intended to provide a long-term solution.

QUESTION 4: You indicated in your testimony support for the elimination of the annual income questionnaire requirement. However, since the IRS and Social Security matches only cover about 75% of those in receipt of pension, how will you verify the other 25% if the requirement is lifted.

ANSWER: Congressman Slattery's bill will give VA discretionary authority to require or not require that certain classes of beneficiaries file an annual eligibility verification report (EVR). Although we support this provision, we do not intend to eliminate the EVR program entirely.

Since approximately 76 percent of our beneficiaries have either no income or income only from social security, we feel that we can monitor these beneficiaries through our computer matching programs with the Social Security Administration and the Internal Revenue Service, without the need for obtaining annual EVRs. However, each year we would send them a letter reminding them that they are required to report to VA changes in income, dependency, net

worth, and any other factor which may affect benefit entitlement. The remaining 24 percent of pension beneficiaries would continue to receive annual EVRs and be required to complete them in order to retain eligibility for benefits. If we could reduce the number of EVRs by 76 percent, we could reduce correspondingly the number of FTEE required to process them. We could then redirect this FTEE to other areas requiring attention.

QUESTION 5: With respect to the redesign of the "Rating Activity", could you expand on what will actually be involved in this redesign? For example, how would the team or total-process approach differ from the assembly-line structure which is currently in place?

ANSWER: The team approach combines the functions assigned to different positions with the skills of each team member. After a claim has been identified as a rating issue, it will be assigned to a rating technician to ensure service is verified; ensure essential medical evidence is of record and request it, if necessary; review evidence as it is received to ensure it is what is needed; and, when all the essential evidence is on file, send the case to the rating board for a determination. This approach decreases both the number of times the case moves from one person to another and the number of people who must handle it.

**QUESTIONS SUBMITTED BY
HONORABLE JIM SLATTERY, CHAIRMAN,
SUBCOMMITTEE ON COMPENSATION PENSION AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS**

**HEARING ON LEGISLATION AFFECTING
VA ADJUDICATION AND APPEALS PROCESS**

NOVEMBER 17, 1993

QUESTION 1: Please elaborate on your comments on the impact of H.R. 3269, section 2, which would require that adjudication employees not receive credit for work until the appeal period has expired?

Why wouldn't this correct any false incentive that adjudicators have to "churn cases"?

Would it really impact on your ability to use supervisory review in an effective manner?

How would it increase the number of cases pending?

What specific impact would it have on your justification for staffing?

ANSWER: Adjudicators work under performance standards that emphasize quality, timeliness, and production in order to allow a determination of how well the individual is meeting the expectations of the position. Section 2 of H.R. 3269 would delay performance information by moving the credit for work completed to at least a year after the action was completed by the adjudicator.

For the past three fiscal years, adjudication has completed approximately 3.3 million compensation and pension end products, reflecting the number of potentially appealable issues. If we were to continue these end products for an additional year to account for the appeal period, instead of closing them when the adjudicative decision is completed, the number of pending issues to monitor would be approximately 3.3 million for any given month. If this number were added to the approximately 535,000 cases actually pending adjudicative decisions, the effect of continuing unnecessary controls on completed cases may be appreciated.

Staffing is tied to the annual budget process and is based on workload received, completed, and anticipated. The end product credits taken by each station form the basis of the budget process in the area of adjudication staffing. To protract the process by extending end products for an additional year would make the budget process much less responsive to workload changes and trends.

QUESTION 2: In your testimony you conclude that the reports that would be required by H.R. 3269, section 3 are unnecessary in view of existing reports and control systems. Please elaborate on what is currently available that renders unnecessary the reports that section 3 would mandate. If these systems are in place, and are adequate, why does the current situation, including backlogs and delays, still exist and perhaps continue to worsen?

ANSWER: We have a number of reports that allow us to track claims from the point of receipt to the adjudication decision and eventually the outcome of any appeal that may be filed. Our Appeal Tracking System (ATS), for example, provides a means for monitoring appeal processing through a series of reports designed to help move each case through the process and provide a tool for identifying problem requiring correction. In addition, BVA has a PC-based computer program to docket and track cases received.

The presence or absence of any particular report does not contribute to the backlog and delays alluded to. The backlog has been caused by a combination of factors, discussed at length in earlier testimony and statements, e.g., Court decisions, military downsizing, the growing

complexity of claims, the requirement for more comprehensive notification, and the inexperience of many claims examiners. The claims we have received have exceeded our resources to process them as timely as we would like.

QUESTION 3: Have you any plans to revamp the current systems of timeliness reports, quality control, case review, and staff budgeting as part of the modernization initiatives that are underway?

ANSWER: As the Benefits Delivery Network (BDN) is modernized to the VETSNET system, we will review our range of management reports to modify or replace them as need demands and technology permits. We have made similar adaptations over the decades as we have progressed from hard-copy, manual reports to our current automated system.

QUESTION 4: What is the current effect of the Court of Veterans Appeals on the appeal rate of the original VARO decisions? Has this situation stabilized at all in the recent past?

ANSWER: The number of notices of disagreement (NOD) filed from 1990 to the present has risen slightly, from 2.25 percent to 2.5 percent of completed claims. The number of appeals received by BVA has dropped from 43,903 in FY 1991 to 38,229 in FY 1992 and 38,147 in FY 1993. While the NOD rate has risen slightly, we do not know if any or all of the rate increases can be attributed to the Court of Veterans Appeals.

QUESTION 5: Rating board members now type their own ratings rather than dictate them to a typing pool in some offices. They also now use a much more detailed format. How has this affected rating board production? Has it caused backlogs to grow?

ANSWER: The new rating format which became effective October 1, 1993, resulted from Public Law 101-237, which required that if a benefit is denied, notice to the claimant must include the reasons for the denial and a summary of evidence considered. Our new format uses required entries in "ISSUES(S)," "EVIDENCE," "DECISION(S)," and "REASONS AND BASES" sections. Rating specialists must now explain the disposition of each issue so that the claimant will have a clear understanding of a particular decision. Although it now takes longer to prepare a rating decision, several factors have contributed to the backlog of claims awaiting rating board consideration, and we are unable to distinguish the effects of the new format from the effects of all other factors.

QUESTION 6: What is your position on encouraging military retirees to file disability compensation claims? What advantage is served by claims for relatively non-disabling conditions, if these claims are overloading the system?

ANSWER: A veteran may file a claim at any time for a condition which he or she believes to be related to military service. It is not our policy to discourage any claim, whatever reason a veteran may have for filing it, and by law we are bound to consider all claims, however minor.

QUESTION 7: Is there anything you can do in the short run to improve timeliness in acquiring service medical records?

ANSWER: Since October 1992 VA has received service medical records directly from Army separation centers. When a claim is filed, these records are sent with the claim to the VA regional office. If no claim is filed, the records are sent to the VA Service Medical Records Center in St. Louis. This procedure has greatly improved timeliness. As a result of negotiations in progress with the other branches of service, the Navy and Marine Corps began sending records directly to VA effective May 1994, with the Air Force following in June 1994.

QUESTION 8: Are such projects as the use of telephones in adjudication to develop claims and to request evidence proving to be effective? Are there plans to expand these projects nationwide?

ANSWER: The projects involving the use of telephone contacts to expedite claims development have not been in place long enough to allow a determination of their effectiveness. As this or any similar effort proves its merit we will expand implementation as rapidly as possible.

QUESTION 9: What are you doing to better utilize what appears to be a scarce resource--namely trained rating specialists? What can be done to alleviate the bottleneck situation in the rating boards without sacrificing the quality of the decisions?

ANSWER: We have completed two tests of single-signature ratings, one at the Cleveland and Detroit regional offices, and one at the Little Rock Regional Office. As a result of the first part of the test at Cleveland and Detroit, we have given all regional offices discretionary authority to permit, in certain types of claims, single-signature ratings by rating specialists who station management is confident will produce quality work without need for additional signatures. The Compensation and Pension Service is now reviewing independent samples of cases at the conclusion of the tests to assess the overall quality of the determinations.

We will also suggest that management at regional offices conduct a review of local manpower to identify any resources which might be productively redirected into the rating activity. Some regional offices have created a rating technician position. The rating technician has taken over some of the time-consuming work formerly handled by rating specialists, such as screening and developing rating cases as well as performing follow-up authorization tasks.

Where we have found severe backlogs of cases, Help Teams have been organized to assist in reducing the pending work volume. We recently employed this approach at three regional offices with good results. We will consider the use of Help Teams as future needs arise, although this is only a short-term solution.

Through rating board automation and use of other PC-based computer applications, we are developing the means to decrease the amount of time necessary to produce a rating without sacrificing quality.

QUESTION 10: Is it really necessary to require claimants to provide certified copies of documents proving military service and domestic relationship?

ANSWER: Prior to June 14, 1982, VA generally accepted the certified statement of a veteran as proof of marriage and dependency of a child. On the basis of a GAO report, VA amended its regulations to tighten the requirements for documentary evidence to establish marriage or child dependency, effective June 14, 1982. The GAO report, which was the result of a 2.5 year study, indicated a high incidence of fraud in government programs. GAO estimated that VA had a loss of \$6.6 million due to fraud, of which \$3.8 million was due to false statements. VA was one of 5 departments or agencies accounting for nearly all false statements.

On the basis of a recommendation of the Blue Ribbon Panel, we have prepared an interim rule amending VA regulations to allow in certain instances acceptance of photocopies of documents to establish birth, death, marriage, or relationship of a claimant or a claimant's dependent. We earlier had published regulatory amendments to relax service evidence requirements in certain claims for burial allowance, and to relax the requirements for establishing marriage to the veteran in certain claims for death benefits from surviving spouses.

QUESTION 11: What specific plans do you have to improve and modernize claims development and eliminate piecemeal development and errors and resulting delays?

ANSWER: We are developing the Claims Processing Subsystem (CPS), which will use rule-based technology for development of all issues related to original disability compensation and pension claims. The claims development function will begin from the point the claim is received to the point the claim is referred for final action. This system will take the operator through the processing steps needed to ensure procedural accuracy. CPS can make decisions, provide consistency in the decision-making process, share critical knowledge, perform as a training tool, make it easy to implement policy changes, automatically prepare correspondence,

and capture data. Claims development will be accomplished accurately and at one time, reducing human error and piecemeal development.

The Blue Ribbon Panel identified the need for a rating technician responsible for screening and developing rating cases and performing authorization actions. The rating technician ensures that a rating specialist does not receive a claim until it is ready for a decision. Many of our field stations have already created such a position with positive results, and we are developing a plan to implement it nationwide.

QUESTION 12: Please explain the "VETSNET" project. What does it entail, and what advantages, from the claimants' point of view, will result from this investment?

ANSWER: "VETSNET" is the name assigned to the modernized automated business system which will replace the existing BDN (Benefits Delivery Network) system. Veterans Benefits Administration (VBA) employees have been selected to work on a team whose purpose is to re-engineer business operations to improve the efficiency of VBA operations nationwide. Compensation and pension, education, veterans assistance, and vocational rehabilitation employees are included on the team. Emphasis will be on reviewing, revising, and developing program policy and procedures, defining functional requirements for the modernized automated business system known as VETSNET and designing the production system for deployment throughout VBA. These teams will shape VBA policies for how business and claim processing will be done for the foreseeable future.

Arthur Young Jr.
Report

EXECUTIVE SUMMARY

The Department of Veterans Benefits (DVB) is the organization within the Veterans Administration primarily responsible for administering nonmedical programs which provide financial assistance to veterans, their dependents and their survivors. (pp. I-2 - I-7) The DVB was one of the first government agencies to institute a work measurement system in the mid-1950's. (pp. I-8 - I-10) Today, it is one of the few government agencies with a unified work measurement system across all its program areas. The system is intended to serve DVB managers at all levels including: the Chief Benefits Director, the Field Directors, the Service Directors, the DVB Budget Officer, the Station Directors and the Station Division, Section and Unit Chiefs. (pp. I-11 - I-14) Information on approximately 340 end products is systematically collected, compiled and reported every month. (pp. II-10 - II-11) The DVB work measurement system not only has a relatively long history and operates within a rather large organizational hierarchy, but it is also complicated in that a voluminous amount of data is collected, compiled and reported every month.

In recent years, both management within the Veterans Administration and groups outside the organization have been concerned about the credibility of the work measurement system. (pp. I-17 - I-21) As a result of these concerns, the DVB requested a thorough and objective evaluation of the work measurement system. The evaluation specifically was to address certain objectives focused on the accurately measuring the effectiveness of field station operations, the validity of the methodology used to determine and allocate present and future staffing requirements for budgetary purposes and the adequacy of productivity measures for holding managers accountable for performance. (p. I-2) This report presents the results of this evaluation.

This evaluation of the work measurement system is based on a detailed review of all parts of the system. It differs from certain past high level reviews of the system which, by definition, focused only on selected aspects of the system. (pp. I-21 - I-22) The evaluation framework used in this study covered every aspect of the work measurement system. It included: the context and content of the work, the definition of the measures, the development of the standards; the analysis of the data; the reports of the results and the use of the results at all management levels. (pp. I-25 - I-29) Thus, this evaluation was able to provide the detailed assessment warranted by this study's objectives.

The evaluation was conducted from August of 1984 through January of 1985. It involved three general areas of review: the Central Office (i.e., headquarters) review, the field station review, and the review of other organizations. (pp. I-23 - I-25) The field station review was conducted through a series of ten site visits which ranged from four days at smaller stations to two weeks at

larger stations. It was not until information on all aspects of the system was gathered that a thorough evaluation could be made.

OVERALL CONCLUSION

The foundation for a valid and reliable work measurement system is already in place within the DVB. One of the most important aspects of this foundation is that DVB managers at all levels acknowledge the importance of good productivity measures. In particular, many field station managers use productivity data to manage their day-to-day operations. However, the overall conclusion of this evaluation is that the system, as it currently exists, cannot meet its specified objectives, as set forth by the DVB, owing to a range of specific problems that impact the generation, validity and use of work measurement data.

Many factors contribute to problems with the validity of the data in the work measurement system. Valid productivity measures in service organizations are, by definition, difficult to obtain. (pp. 1-14 - 1-17) Validity refers to the degree of accuracy or correctness of the data as a description of a corresponding phenomenon. For example, it is not very difficult to obtain a valid measure of a person's weight, given an accurate scale. However, productivity measures are much more complicated. Validity of these measures can be affected by: (1) the context and the content of the work; (2) the definition of the measures, (3) the development of the standards; (4) the data collection and input, and (5) the analysis. The utility of these measures can be determined by the reports of the results and the use of the results. The evaluation framework used in this study to assess the validity and utility of the work measurement system covered all these factors. Although the problems identified are numerous, they are by no means insurmountable. One factor, in and of itself, may not have a dire consequence on the overall measurement of productivity, but when considered together, these factors seriously detract from the overall validity of the productivity measures.

COMMENTS ON PAST STUDIES

The conclusions of this study vary from those reported by both the General Accounting Office and the Grace Commission. (pp. I-17 - I-21) The General Accounting Office (GAO), in a 1982 study, concluded the following about DVB operations, "their organization, workforce and procedures are uniform." The Grace Commission, in their 1983 assessment of DVB operations, concluded, "the same jobs are performed in the same manner throughout DVB." In this study, no assumptions about DVB field station operations were made which might have included the general conclusions of prior studies such as those cited above. Instead, a detailed examination was conducted of each of ten DVB field station operations by division. It was determined that although all these field stations provide similar benefits and services to veterans following certain basic work processes their specific organization, workforce and procedures do vary. (pp. III-2 - III-26)

The conclusions of this study vary in yet another way. The GAO also concluded that "...the productivity measures are basically sound." This detailed assessment of the measures proves contrary to this. Thus, the GAO conclusions about variation in productivity levels across field stations must be viewed in a new light. If the measures themselves are not valid, then comparisons based on these measures cannot be valid. The Grace Commission concluded that the productivity measures were inaccurate based on the development of the work rate standards and stated that, "...the DVB's work measurement system overstates actual productivity and effectiveness." This evaluation demonstrates that the productivity measures are inaccurate, but the direction of this impact on productivity is not uniform. In some instances, productivity may be understated and in others it may be overstated. Furthermore, this study found that the basis of the Grace Commission's conclusions about the accuracy of productivity measures is unfounded. The Grace Commission reported that, "...VA incorporates delays as well as personal and administrative time in its basic calculations. It then adds an additional factor for personal and administrative time elements in establishing the overall work rate standard." The Grace Commission recommended that the DVB implement the techniques used by the private sector which isolate such "down time" factors and control the amount to be included in the final standard. Yet, in this detailed review, it was determined that the Grace Commission's understanding of the DVB's development of allowance factors is incorrect. DVB has used and currently uses the technique recommended by the Grace Commission. As a matter of fact, the Grace Commission recommended conducting a "ratio-delay" study which is just another name for a work sampling study, it was what work sampling was called in 1941 when it was introduced in the United States by R. L. Morrow. The DVB develops the allowance factors based on a work sampling study which isolates these "down time" factors. Yet the Grace Commission's projected time savings within DVB field operations were based on this unfounded allegation. In addition, the Grace Commission recommended that a pace-rating technique be used. This technique would not be appropriate for the DVB's primary work (i.e., case type work) which tends to be non-repetitive, judgmental, and non-continuous (i.e., not completed in one sitting).

GENERAL CONCLUSIONS AND SELECTED FINDINGS

The conclusions and specific findings of this study focus on the specified objectives of the work measurement system.

ACCURATELY MEASURING FIELD STATION EFFECTIVENESS

The DVB work measurement system does not accurately measure field station effectiveness due to a variety of factors. The conclusions on this objective focus on the following issues. the definition of effectiveness, the process and system used to gather and compile data for measures of effectiveness, and the development

and application of criteria to analyze data and assess effectiveness.

THE DEFINITION OF EFFECTIVENESS

General Conclusion: The DVB work measurement system can only provide information on one dimension of effectiveness, namely productivity. However, other DVB performance systems do exist which can provide information on the quality dimension of effectiveness. (pp. II-4 - II-6)

- Specific Findings
- Effectiveness of field station operations includes both the quality of the work conducted and the efficient utilization of resources. (III-166 - III-170)
 - Information on the quality of DVB field station operations exists in various DVB performance systems. (III-42 - III-46)

MEASURES OF EFFECTIVENESS

General Conclusion: There are serious limitations to the validity of productivity measures currently provided by the DVB work measurement system. In addition, there are also some limitations to the validity of quality measures provided by various DVB systems. (pp. II-6 - II-14)

- Specific Findings
- Two practices involving the accounting and use of borrowed and loaned time affect the validity of the input measures. (pp. III-32 - III-33)
 - The current exclusion of direct labor non-GOE hours from the definition of a division's input measure affects the validity of the measure. (pp. III-28 - III-31)
 - Various weaknesses exist within the current end product structure such as the classification of work processes and activities as end products. (pp. III-33 - III-42)
 - Various limitations exist in the current process of developing work rate standards. (pp. III-50 - III-77)
 - Various quality measures contain some identified weaknesses. (pp. III-42 - III-48)

THE PROCESS AND SYSTEM USED TO GATHER AND COMPILE THE DATA

General Conclusion: The process and system used to gather and compile data for productivity measures lead to problems in data validity and reliability. There is too much reliance on manual data collection. Feeder reports used to compile data are not standardized. The validation efforts on data collection and input are limited. (pp. II-14 - II-16)

- Specific Findings
- Only one system (TARGET) currently exists that automatically accumulates and transfers end product data to AMIS. (pp. III-83 - III-84)
 - Other systems exist that automatically accumulate data, but these have not yet been integrated with AMIS. (pp. III-85 - III-87)
 - Not all field stations are maximizing the use of existing automated counters, logs, registers and journals as the source of workload data, especially in the support services. (pp. III-85 - III-90)
 - Although the support services divisions interact with systems that automatically accumulate data and the TARGET system, they are still required to manually collect and input a majority of AMIS data. (pp. III-88 - III-92)
 - The formats of feeder reports vary significantly from station to station detracting from the validity of the data. (pp. III-92 - III-103)
 - Validation of the data collected and input varies among field stations and divisions. (pp. III-108 - III-112)

THE DEVELOPMENT AND APPLICATION OF CRITERIA TO ASSESS EFFECTIVENESS

General Conclusion: The assessment of field station effectiveness is a piecemeal process at this time. Although there is recognition that productivity is only one aspect of effectiveness, there appears to be a tendency to judge effectiveness on this

basis alone. This could be due to the lack of a system or structure which uniformly reports information about the quality and productivity of field stations. (pp. II-16 - II-18)

- Specific Findings
- Most field station management at the stations visited compare their unit's productivity to that of other stations. (pp. III-118 - III-124)
 - A wide variety of data sources are used to assess the quality of field station operations. (pp. III-124 - III-129)
 - The program offices tend to concentrate on quality data rather than on productivity data. (pp. III-129 - 131)
 - The Field Directors place more of an emphasis on productivity data than do the services. (pp. III-131 - III-132)
 - A wide variety of reports exist on productivity and quality data, but few reports present both productivity and quality data side by side. (pp. III-134 - III-144)

PROVIDING A VALID METHODOLOGY FOR BUDGETARY PURPOSES

Conclusions on the DVB work measurement systems capability to provide a valid methodology to determine and allocate present and future staffing requirements for budgetary purposes focus on the following issues: the DVB budget process; workload projections, staffing determinations, and staffing allocations.

THE DVB BUDGET PROCESS

- General Conclusion:
- The DVB budget process is not guided by a single system for determining staffing. Instead, a combined process of projecting workload, staffing and productivity levels is used. Both Central Office service staff and field station staff participate in this process. Both the DVB work measurement system and the Federal Productivity Measurement System (FPMS) are used. (pp. II-19 - II-22)

- Specific Findings
- In some instances, the DVB work measurement system is used to determine a staffing level given a set productivity level or a

productivity level given a set staffing level. (pp. II-22 & III-146)

- In other instances, the FPMS is used to determine a staffing level given a set productivity level or a productivity level given a set staffing level.. (pp. II-22)

WORKLOAD PROJECTIONS

General Conclusion: Although workload projections are the basis of DVB's budget projections, formal methodologies intended to project program workloads consistently are limited or nonexistent. The exception was the Insurance program. (pp II-22 - II-26)

- Specific Findings
- The field stations base their workload projections on Central Office assumptions which they adjust for regional conditions. (pp. III-146 - III-149)
 - Supporting documentation for the program assumptions for all services with the exception of Loan Guaranty and Insurance could not be obtained. (pp. III-172)

STAFFING DETERMINATIONS

General Conclusion: Neither the DVB work measurement system nor the Federal Productivity Measurement System is used systematically to determine staffing levels, given projected workloads and desired productivity levels. The use of the DVB work measurement system to determine specific field station staffing levels is not appropriate. (pp. II-26 - II 28)

- Specific Findings
- This past year, the DVB Budget Office, for its budget submission, translated the productivity figures and/or workload figures from the DVB Work Measurement System to the Federal Productivity Measurement System. (pp. III-132)
 - The work rate standards provided by the DVB work measurement system represent averages for all field stations. As such, these standards are best employed when determining staffing across the nation, not when determining staffing at one station. (pp. III-50)

STAFFING ALLOCATIONS

General Conclusion: No formal guidelines or methodologies exist for the allocation of staff at any level. However, the Chief Benefits Director and Field Directors do consider the number of standard man-hours produced in the prior year as a criterion in their staffing allocation. (pp. II-28 - II-30)

Specific Finding • The program offices at Central Office play no major role in the staff allocation process. (p. III-174)

PROVIDING MEASURES TO HOLD MANAGERS ACCOUNTABLE

The conclusions on the DVB work measurement system's capability to provide measures to assess station performance to hold managers accountable for assigned productivity and/or effectiveness goals focus on the following issues: the limitations of the work measurement system; the use of productivity and/or effectiveness measures in the current performance appraisal system; and the establishment of goals.

THE LIMITATIONS OF THE WORK MEASUREMENT SYSTEM

General Conclusion: The productivity and effectiveness measures currently provided by the DVB work measurement system are not valid and are easily manipulated. However, if various deficiencies are corrected, the system will provide valid measures for appraisal purposes. (pp. II-31)

Specific Findings • Weaknesses exist within the current end product structure which tend to vary by division. (pp. III-35 - III-42)

• Validation efforts of the data collected for AMIS vary across stations and divisions. (pp. III-108 - III-112)

THE CURRENT PERFORMANCE APPRAISAL SYSTEM

General Conclusion: The use of productivity and/or effectiveness goals in performance appraisals varies within regions, among stations and even among divisions within a station. (pp. II-32 - II-33)

Specific Finding. • At some field stations there may be an emphasis on the number of work units completed, while other stations may emphasize the quality of services

provided. (pp. III-154 - III-164 and III-169 - III-170)

ESTABLISHMENT OF GOALS

General Conclusion: DVB managers believe that various factors must be considered when establishing productivity goals for individual managers. These factors include the accuracy of workload projections and the flexibility in the management of resources. (pp. II-33)

Specific Finding • Managers at various levels within field stations are often held accountable for meeting productivity goals relative to a national or regional average. (pp. III-154 - III-164 and III-169 - III-170)

RECOMMENDATIONS

The recommendations of this study are categorized by each of the required objectives of the DVB work measurement system.

STEPS WHICH MUST BE TAKEN TO ACCURATELY MEASURE THE EFFECTIVENESS OF DVB FIELD STATION OPERATIONS

Proposed solutions to limitations of the current work measurement system are presented in a general recommendation and a series of specific recommendations with respect to each aspect of our evaluation framework.

General Recommendation: Using the DVB work measurement system and other DVB performance systems as a basis, measures of effectiveness should be identified for each program providing direct services or benefits to the veteran and for field stations overall. These measures should provide a means to assess both the productivity and quality aspects of the work.

Many measures of effectiveness exist within various systems in the DVB. However, some measures are invalid and others are unreliable. Before setting out to correct all these deficiencies it is important to identify exactly what are "good" measures of the effectiveness of DVB operations. At a general level, quality and productivity are definitely two dimensions which must be considered. The specific measures of quality and productivity are more difficult to define and operationalize. Each program within the DVB has specific objectives. For example, one of the Vocational Rehabilitation and Counseling Program's objectives is to

successfully place rehabilitated veterans in suitable employment. The quality aspects of meeting this objective may include timeliness measures, veteran satisfaction with service or the suitability of the employment. The productivity aspects may include how much time a counselor and other DVB employees spent on the activities necessary to successfully place the veteran in suitable employment. The first step in identifying the measures of effectiveness involves specifying the objectives of each DVB program. Next, measures of both quality and productivity should be operationalized based on the objective. Measures of effectiveness for the station overall must also be identified. These measures may represent more than just the summation of the program measures of effectiveness. They also include items such as public relations and overall support provided by both the administrative and finance activities.

THE CONTEXT AND CONTENT OF THE WORK

Recommendation: When possible, measures of effectiveness should not be affected by variations in the context and content of the work. If they are, this impact should be identified. (pp. IV-3 - IV-4)

THE DEFINITION OF THE MEASURES

Recommendations: The end product structure of the DVB work measurement system should be redefined to include only end products which represent the services and benefits which the veteran receives and other functions necessary to the mission of the DVB such as debt collection and property management. (pp. IV-4 - IV-6)

The definition of "input" of the DVB work measurement system should be reconsidered in terms of the intended use of the productivity measures. (pp. IV-6 - IV-7)

The terms, borrowed and loaned time, within the DVB work measurement system should be further specified. (pp. IV-7)

The current quality measures in the DVB's Statistical Quality Control Program should be re-evaluated to assure that only valid measures are used. (pp. IV-7 - IV-8)

THE DEVELOPMENT OF THE STANDARDS

Recommendations: The frequency of work performance studies should be tied more closely to program changes. (pp. IV-8 - IV-9).

If DVB believes that certain field stations have unique characteristics that necessitate separate work rate standards, then work sampling studies should be conducted at these sites. (pp. IV-9)

The criteria used to sample field stations for work performance studies should be further specified, and specific measures should be identified. In particular, pending workload should be included in the criteria. (pp. IV-9 - IV-10)

The data used and the decisions made in the sample selection process should be well-documented. (pp. IV-10).

DVB should implement a formal standardized training program for field station participants in the work performance studies. In addition, a minimum of a two day trial-run of data collection should be required. This data should be sent to the Management and Manpower Staff for review. (pp. IV-10 - IV-11)

As a quality control mechanism, a survey of all field station participants should be conducted after a work performance study to assess the adequacy of the training. (pp. IV-11)

DVB should not force-fit direct labor effectiveness to 100%. However, if the DVB decides to continue this practice, the differential in standard man-hours should be consistently applied to all standards. (pp. IV-12)

The DVB should apply the statistical concept of upper and lower control limits correctly in the process of developing work rate standards. In addition, DVB should consider compiling man-hour and work count data in consecutive time intervals (less than one month). (pp. IV-12 - IV-13)

The DVB should provide documentation for any standards which are developed based on program

estimates even though work sampling data was collected. (pp. IV-16)

The DVB should provide documentation for any variation in the percentage of time allocated for each category of the allowance factor, if the work sampling data is not used. (p. IV-16 - IV-17)

The DVB should automate the final steps in the development of the work rate standards. (pp. IV-17 - IV-18)

THE DATA COLLECTION AND INPUT

Recommendations:

The DVB should be actively involved in various VA-wide projects such as: the Improved Management Information System (IMIS) project, the planned enhancements for AMIS, and the redesign of the PAID system. (pp. IV-18 - IV-19)

The use of existing automated counters, logs, registers and journals should be maximized. (pp. IV-19)

Control points should be established for compiling data from existing automated counters, logs, registers and journals. (pp. IV-19 - IV-20)

The format of feeder reports should be standardized for all divisions. The feeder reports should include the type and source of information, the number of workcounts and the control point responsible for compiling the data. (pp. IV-20 - IV-21)

- The source of the data collected should be validated more frequently, based on a set schedule.
- The responsibility for this validation effort should be formally specified.
- AMIS coordinators should have primary responsibility for ensuring that the data from feeder reports is accurately transferred to AMIS segments.
- The teletypist hardcopy of the AMIS segments transmitted should be returned to the division AMIS coordinator for validation. (pp. IV-21 - IV-22)

ANALYSIS OF THE DATA

Recommendations: At the aggregate level, the Central Office Service Staff should conduct more systematic analyses of performance data to identify trends and relationships. (pp. IV-22 - IV-23)

Guidelines and software programs for analyses of field station level performance data should be developed by the Central Office program staff. (pp. IV-23)

REPORTS OF THE RESULTS

Recommendations: Investigation to determine the feasibility of more timely distribution of the AMIS monthly report should be undertaken. Concurrently, DVB should consider restricting AMIS monthly report distribution to Central Office and should emphasize field station use of reports generated at the station level as the primary mechanism for assessing effectiveness. (pp. IV-24)

Field station divisions should be provided guidelines for preparing specific management reports on their personal computers. (pp. IV-24)

The field stations and Central Office should reassess their need for various reports and eliminate duplication in reporting which may exist. (pp. IV-24)

USE OF THE RESULTS

Recommendations: Guidelines for the use of performance data in the resource utilization activities of field stations should be developed. (pp. IV-25)

Productivity and quality data should be used to identify training needs. (pp. IV-26)

Productivity and quality data should be used as the basis for identifying improvements in operations. (pp. IV-26)

STEPS WHICH MUST BE TAKEN TO OBTAIN A VALID METHODOLOGY TO DETERMINE
AND ALLOCATE PRESENT AND FUTURE STAFFING REQUIREMENTS FOR BUDGETARY
PURPOSES

This study identified various problems in the DVB budgeting process. Resolution of these problems can be achieved by implementing the following recommendations.

Recommendations: The service offices should identify end product categories which are representative of the services and benefits provided to the veteran and the functions necessary to the mission of the DVB such as debt collection and property management. In addition, they should establish categories of veterans within these end product categories to identify the status of the veteran (i.e., initial service, re-entry, re-assessment, etc.). (pp. IV-27)

Guidelines for projecting workload and staffing should be developed for use by all service offices. (pp. IV-27 - IV-28)

Each service office should establish a methodology for projecting workload. (pp. IV-28)

Personnel within the service offices who are responsible for budget projections should receive training in budgetary techniques. (pp. IV-28)

The field stations should not participate in the budget justification process. (pp. IV-28 - IV-29)

Formal budget justifications should be submitted by the Service Offices to the DVB Budget Office for review. (pp. IV-29)

If the staffing levels justified cannot be realized, the DVB Budget Office should request further analyses from the Service Offices. (pp. IV-29)

The DVB Budget Office should be responsible for using the program analyses as a basis for their final staffing justification. (pp. IV-29)

Formal guidelines should be developed which identify the factors that should be considered for staff allocation by region, by stations within a region, and by divisions within a station. (pp. IV-30)

The program offices should provide the Chief Benefits Director and the Field Directors with their recommended distribution of staff by region and field station. (pp. IV-30)

The Chief Benefits Director and the Field Directors should document the reasons for any deviations from the Service Office recommended staffing levels. (pp. IV-31)

The Service Offices should assess the accuracy of their workload projections for each fiscal year and should adjust their methodology or assumptions as necessary. (pp. IV-31)

STEPS WHICH MUST BE TAKEN TO OBTAIN VALID MEASURES TO ASSESS
MANAGER'S PERFORMANCE AGAINST ASSIGNED PRODUCTIVITY AND
EFFECTIVENESS GOALS

Performance appraisal in DVB is a systematic process of objectively evaluating an employee's performance. The use of productivity measures provided by the DVB work measurement system is appropriate if the recommendations directed at improving the validity of the measures are implemented and if appropriate goals are established. The following recommendations specifically address performance appraisals.

Recommendations: Managers should be held accountable for assigned improvements in the productivity level of their station, division, section or unit. If these levels are not reached, the manager should be held accountable for identifying the factors which prevented the realization of the planned improvement. (pp. IV-32)

Central Office program staff who are responsible for field operations should be held accountable for identifying and demonstrating improvements in the operations of their program which would, when implemented, impact the overall productivity level of their program in the field. (pp. IV-32)

DVB field stations should not use work rate standards from the DVB work measurement system to measure individual performance. (pp. IV-32 - IV-33).

The performance of DVB managers should also be assessed against assigned quality goals. (pp. IV-33)

IMPLEMENTATION APPROACH

The actions recommended in this study as solutions to the problems which prevent the DVB work measurement system from accomplishing its stated objectives are numerous and may seem complicated. However, an implementation approach that follows from the evaluation framework used in this study can serve as a single, straightforward guide for implementing the recommendations. The evaluation framework included the following steps: the context and content of the work; the definition of the measures; the development of the work rate standards; data collection and input; the analysis of the data; the reports of the results; and the use of the results.

Implicit in this guide for implementing the recommendations is the assumption that it is of greater utility to first concentrate efforts on solutions to problems identified on the basis of the initial steps in the work measurement process. For example, revising the end product structure should precede improving the development of the work rate standards. In a like manner, the definition of input (i.e., GOE man-hours) for the productivity measures should be reconsidered before standardized feeder reports for the collection of input are designed.

Resources Necessary for Implementation

The Chief Benefits Director should delegate the responsibility for the overall implementation and integration of these recommendations to the Director of the Management and Manpower Staff. In addition, the Chief Benefits Director should form an advisory task force of six field station directors to aid the Director of Management and Manpower in this effort. The implementation of most of the recommendations requires personnel resources from the Central Office program staffs. These personnel are currently in place and are responsible for many of the functions covered in the recommendations. The implementation of these recommendations does not require a continuous long-term effort. Four task forces should be formed within each program. The DVB may also consider supplementing Central Office program staffs with division personnel from the field stations for these task forces. One task force should address the overall issue of measures of effectiveness. Another should focus on the improvements needed in the work measurement system. The DVB may want to consider forming these two task forces sequentially. The third task force should concentrate its efforts on improving the budget projections. The Budget Office should work with each program budget task force. In addition, an overall budget task force coordinated by the Budget Office and with representatives from each program office and the Offices of the Field Directors should be formed to address the issue of staffing allocations. The Budget Office and the budget task forces should have at least short-term solutions for the next budget cycle. One service, Vocational Rehabilitation and Counseling, has already made some effort aimed at improving their budget workload projections (see Exhibit IV-2).

Cost of Implementation

The cost of improving the DVB work measurement system by implementing the recommendations in this evaluation is minimal. Initially, DVB can capitalize on VA-wide efforts to enhance the AMIS system and redesign the PAID system. In order to do so, DVB must first identify its specific needs relative to these efforts. DVB already has numerous program-specific automated systems, such as TARGET and the Loan Guaranty systems, which require better utilization, not a system redesign. The additional automation of the analysis for the work performance studies can be accomplished by utilizing computer specialists within the VA who provide VA-wide support.

Time Required for Implementation

The deadlines associated with the implementation of these recommendations should be driven by the need for immediate improvements in the DVB budget formulation process. The most immediate timeframe for this implementation would be the next three months to accommodate the budget process. Improvements to the system should be made before the next DVB budget submission so that credibility of the system can be restored in the short-term.

It is recognized that the recommendations speak to the management of the system in an ongoing fashion and comprise actions and techniques which have a useful life which goes well beyond this three month period. In this vein, full implementation of these recommendations should be viewed as a way of doing business in the DVB, rather than as a discrete one-time project that has finite beginning and end dates. Viewed in this manner, the DVB work measurement system can be a dynamic system that accommodates the changes that inevitably will continue to occur within DVB operations.

CONCLUDING REMARKS

In summary, no one problem completely invalidates the DVB work measurement system. Thus, no one solution, in and of itself, will restore full credibility to the system. Yet, re-establishing the credibility of the system is key. The efforts required by the DVB to do just that are short-term and the costs are minimal. Task forces composed of DVB personnel can effect solutions to the problems identified in this study. The improved work measurement data which will result from the implementation of these recommendations can help DVB better manage its operations. For example, the improved data could prove very useful to any subsequent study of alternatives to the current DVB structure for providing benefits to veterans; a prime example would be the renewed interest of the part of some in consolidating specific DVB functions. Credible data can provide a solid basis for informed management decisions.

VA REGIONAL OFFICE
CHICAGO, IL
APRIL 27 - MAY 1, 1992

EXECUTIVE SUMMARY

All areas of operations were reviewed at the Chicago VARO. There were significant findings in the areas of Compensation & Pension, Loan Guaranty, Veterans Assistance, and Finance. In Compensation and Pension, timeliness for several EPs is showing a significant decline, and two EPs are in a reportable situation. Just 6 months ago, 10 EPs met standard and 4 met goal, none were in a reportable situation. In Loan Guaranty, the division is experiencing significant delays in cutting off interest on loans in default and payment of property taxes. Delays in both of these areas are costing the VA a substantial amount of money. Additionally, there were several properties without insurance on them. In Veterans Assistance, there was one major finding dealing with the Telephone Interview Activity. The quality of interviews were poor, and many of the VBCs were impolite, rude, and abrupt. VBCs did not provide all of the information the veterans needed. Similarly, some VAIs were cryptic and did not provide a clear understanding of actions taken. In Finance, several recommendations were made. Most of the recommendations dealt with improper reconciliations, not clearing pending items from general ledger accounts, and lack of documentation for actions taken. Also, the division was not establishing overpayments timely, and had failed to initiate action to collect proceeds (\$26,000.00) resulting from a NSF check received for VA owned property. The new owner has been in the house for over 6 months without any follow-up action being taken. The findings in all areas were well received by station management, and the Director indicated that they would take appropriate corrective action.

The findings in the other program areas were mostly procedural in nature. Overall, program requirements are generally being accomplished in an efficient manner. Controls are in place and Division Chiefs receive good support for their programs from station management. Communications among division chiefs and with station management are excellent. There were no problems with the service organizations or union. Individual program summaries are as follows:

Compensation & Pension

The most significant findings in this area were mentioned above. Other recommendations and suggestions included the following:

- Ensure that work is placed under Target control within 7 days.
- Follow the WIPP review plan and annotate claims folder properly.
- Identify period of POW internment on POW claims folders.
- Prepare sequence check schedule and perform folder maintenance regularly.

Education

No major findings. Recommendations and suggestions included the following:

- Process Notice of Change in Student Status in time to stop the next check.
- Conduct thorough WIPP reviews and provide training on Interval Pay.
- Improve timeliness of compliance surveys and approval actions.

2.

Executive Summary--VARO Chicago SurveyLoan Guaranty

The most significant findings in this area were mentioned on the previous page. Other recommendations and suggestions included the following:

- ° Process Notices of Intention to Foreclose within 10 days after receipt.
- ° Improve controls and coding procedures to ensure correct input into PMS.
- ° Review and update the Serious Default Action List on a monthly basis.
- ° Update the station's utilities, heat, and maintenance schedule.

Veterans Services

The most significant findings in this area were mentioned on the previous page. Other recommendations and suggestions included the following:

- ° Investigate delays in routing PA/FOIA mail and take corrective actions.
- ° Discontinue using pattern paragraphs for field examination reports.
- ° Ensure accuracy of FBS master record and improve quality of SAOs.

Vocational Rehabilitation

No major deficiencies. Significant findings included the following:

- ° Provide proper/timely supervision to veterans in rehabilitation programs.
- ° Orient all veterans prior to entering them into a rehabilitation program.
- ° Provide and document comprehensive employment services to veterans.
- ° Conduct staff training in the area of Target case management.

Administrative Services

No major findings. Recommendations and suggestions included the following:

- ° Provide a list of all items authorized for early release to CTA employees.
- ° Use PA/FOIA samples when routing mail and assign date stamps to employees.
- ° Conduct semiannual review of division stock and review forms/form letters.
- ° Establish control procedures for the inactive storage area.

Finance

The most significant findings in this area were mentioned on the previous page. Other recommendations and suggestions included the following:

- ° Process properly sales closings and commissions withheld from cash sales.
- ° Refrain from paying bills before they are due (Prompt Payment Act).
- ° Process properly auto grants and adaptive equipment vouchers.

Personnel

No major findings. Recommendations and suggestions included the following:

- ° Provide training to the Personnel Clerk on processing SF 50s.
- ° Review positions for correct classification and write position reports.
- ° Improve position management and the quality of performance standards.

EXECUTIVE SUMMARY

FIELD SURVEY REPORT FOR MILWAUKEE REGIONAL OFFICE

The Milwaukee Regional Office is a well run regional office. The survey found areas where the office might improve, but it did not uncover any areas that seriously undermine the delivery of benefits to veterans and their dependents. Most of the findings are procedural in nature and the survey specialists provided insight to improve an already well functioning operation.

The Regional Office is colocated with the VA Medical Center and occupies an old building not well suited for regional office operations. However, most is made of what exists and offices are well maintained. Employees appear to have very comfortable arrangements with plenty of space.

The Regional Office employees are well motivated and there is a good work ethic in Milwaukee. Management, at all levels, seeks good communication with their employees and results are clearly seen.

The main issue to develop during the survey is a TQM initiative that violates Veterans Assistance Service guidelines regarding silent monitoring.

Some of the survey findings are listed below.

Finance:

Overall the activity is excellent. The one action item is:

- Transmit on a daily basis remittances received for accounts receivables maintained by the Debt Management Center.

Vocational Rehabilitation:

The survey found that the workload per Vocational Rehabilitation Specialist exceeds what is considered optimum. Dictation is backed up in the Support Services Division which forces Vocational Rehabilitation Specialists to hand write some of their reports, which is a time consuming practice. Some of the action items are:

2.

Executive Summary--VARO New Orleans SurveyLoan Guaranty

No major deficiencies. Significant findings included the following:

- ° Ensure that NODs and NOIs are coded into LCS within 10 days of receipt.
- ° Ensure that GI and 4600 claims are processed within timeliness standard.
- ° Code insurance segments on portfolio loans in PLS within 17 calendar days.
- ° Ensure that portfolio and property management taxes are paid promptly.
- ° Train LSRs in how to utilize the SDAL to invoke interest cutoff.

Veterans Services

This area had staffing problems (see page 1). Significant findings included:

- ° Stop counting Loan Guaranty interviews as interviews conducted in the PIA.
 - ° Send section chiefs to observe VSD operations at other ROs.
 - ° Improve statistical reporting to include reviews/corrections to DOOR.
 - ° Identify, document, and report discrepancies found during SQC reviews.
- Train all staff on quality control findings.

Vocational Rehabilitation

The most significant findings in this area were mentioned on the previous page. Other recommendations and suggestions included the following:

- ° Improve rehabilitation services at the Shreveport outbased location.
- ° Purchase a printer for award actions at the RO and the outbased site.
- ° Notify the veteran of due process prior to taking adverse action.

Administrative Services

No major findings. Recommendations and suggestions included the following:

- ° Develop a training guide for CTA Office Automation Clerks.
- ° Ensure that mail drop points are clearly and correctly marked.
- ° Identify excess and obsolete stock and remove from inventory.
- ° Conduct Records Management Committee meetings and send copy of notes to CO.
- ° Develop a records evacuation plan as part of the station's disaster plan.

Finance

This area was much improved from the last survey. Specific findings included:

- ° Ensure that the Finance Officer signs the monthly trial balances.
- ° Notify LGY of accruals in the LCS system which are at least 30 days old.
- ° Initiate action to write off debts that are uncollectible.
- ° Pay vouchers in accordance with the provisions of the "Prompt Payment Act."

Personnel

No major findings. Recommendations and suggestions included the following:

- ° Implement procedures to provide drug education and awareness to employees.
- ° Develop and publish local circular on the Voluntary Leave Transfer Program.
- ° Publish classification appeals procedures for the information of employees.

VA REGIONAL OFFICE
BOSTON, MA
NOVEMBER 4 - 8, 1991

EXECUTIVE SUMMARY

The VBA consolidated survey at the Boston Regional Office commenced November 4, 1991. All areas were surveyed, except Loan Guaranty whose program has been consolidated under the jurisdiction of the Manchester Regional Office.

The Boston Regional Office is undergoing a major renovation, which includes an asbestos abatement project. This project causes some inconvenience within the office.

The regional office showed improvement since the last survey in a number of areas. The most difficult problems still existed in Veterans Services Division and Adjudication. However, management believed that improvement has been achieved in Adjudication and this was shown to be the case during the survey, but, workflow problems are still paramount in this division. Special assistance was provided by the survey team in an attempt to resolve workflow problems. Indeed, a followup visit was promised by C & P staff and welcomed by the station director.

Veterans Services Division still has serious problems in the fiduciary unit. The most obvious is lack of division management control on fiduciary cases. However, the station director indicated immediate action would be forthcoming.

Other divisions reveal improvement in almost every area, especially in the Administrative Division.

Individual program summaries are as follows:

Compensation and Pension

Some improvement was shown over the last survey and but timeliness is still a problem. A workflow plan is in place and needs to be followed closely. The major findings were:

- Revise portion of the WIPP User Plan.
- Prepare workflow management plan to meet specific end product goals.
- Modify performance standards to reinforce workflow management plan.

Education

- Update calendar information in On Line Approval File.
- Conduct formal refresher training.

Veterans Assistance Service

Serious problems existed in the fiduciary program during the last survey and these same issues again are apparent. There was a lack of technical understanding regarding the program as well as a lack of management controls over the program. In general, it was found that the F&FE program was operating at an unacceptable level. The Director of Veterans Assistance Service has offered support to the Regional Office Director's efforts to address this problem. During the survey, the Regional Office Director, as well as the Deputy Area Director, who was on station for the last half of the survey, pledged immediate action.

Findings included:

- Improve quality of fiduciary and field examination action.
- Review all fiduciary cases where legal custodians have been authorized.
- Improve reliability of the fiduciary and field examinations statistical control.
- Implement a management improvement plan to assure that deficiencies in the F&FE activity are corrected.

VOCATIONAL REHABILITATION

Vocational Rehabilitation staff is motivated to provide high quality service to its clients. They also attempt to broaden the scope of services to veterans, where possible. Generally the division is operating effectively.

Some of the recommendations are:

- Encourage applicants to complete the evaluation process.
- Develop an action plan to improve services to veterans in the Springfield area.
- Comply with due process requirements when disallowing or discontinuing cases.
- Implement DTAP and insure the program is publicized.

ADMINISTRATIVE SERVICES

The Administrative Division has greatly improved since the last survey. Two of the three recommendations are:

- Schedule and conduct annual reviews of outgoing correspondence to ensure full utilization of the CTA.
- Number the local directives correctly.

Finance

The findings of the survey reveal a very well run operation. Few recommendations appear in the report and none can be considered to interfere with the success of the division.

Administrative

As is common at VAM&ROCs staffing for administrative functions is limited. A vacant position makes the operation of the activity more difficult. The activity had numerous recommendations that include ensuring that cash and negotiable instruments are properly processed, conduct annual inventory of all stock, maintain accurate usage records, and to designate the chief, Medical Administrative Service, as the Center Records Officer.

EXECUTIVE SUMMARYSioux Falls Survey
(November 16 - 20, 1992)

The Sioux Falls survey was conducted in the normal manner for consolidated surveys, with the exceptions engendered by the organizational differences between regional offices and regional office - medical centers. All represented program areas performed their reviews and audits in a professional manner.

It is evident that this is a well managed, well run office, staffed by competent, committed people who are providing quality service in a timely manner. Survey specialists complemented the support staffs on their work and professionalism.

Of note is the fact that this is the first survey which asked the programs participating to make note of particularly outstanding situations and identify them in a new section of the survey report called "Commendable Items". Three items were identified for this office:

- ° Education Service commended the working relationship between the Adjudication Division and the Education Services Unit in Veterans Services Division.
- ° Veterans Assistance Service commended division management's innovative approaches to training.
- ° Vocational Rehabilitation Service commended division management's initiative in opening an outbased office at VAMC, Fort Meade.

There were two repeat findings in the Administrative Service Staff area.

Overall, there were no findings that would be considered contentious. During the course of the survey, there were several items that offered the potential of developing into significant issues. The areas concerned primarily the methodologies of determining special act and performance awards. However, as further information was developed and discussions were held with management, there were orderly and effective resolutions to the problems.

Additional findings are:

Station Management:

Developing a diary system for controlling SAOs, and maintaining an adequate paper trail on correcting deficiencies.

Compensation & Pension:

- ° Improving administrative controls and reducing work performed where not necessary (i.e., printing PMC screens for FNODs, and consolidating three reviews of the military files to one)

Education:

- ° Revisions to the way certain SAOs are performed (i.e., frequency and what, specifically, is being reviewed)

Veterans Assistance:

- ° Improving the processing of FOIA/PA mail to improve timeliness.

Vocational Rehabilitation:

- ° Consider developing a VR&C presence at Ellsworth AFB.
- ° Improve due process notification actions and documentation of certain VR&C actions.

Personnel Assistance:

- ° Improve execution of merit promotion announcements.
- ° Improve personnel specialists actions with regard to completing SF-52s.
- ° Improve numbering of position descriptions where collateral assignments exist.

Budget and Finance:

- ° Improve documentation and paper/audit trail maintenance.

Administrative Support:

- ° Improve FOIA/PA support.
- ° Improve reviews on forms and form letters. (REPEAT).
- ° Number station circulars IAW the VA system. (REPEAT). [Note: This was the subject of an inordinate amount of disagreement on the part of the station director.]

VA REGIONAL OFFICE
LOS ANGELES, CA
JULY 6-10, 1992

EXECUTIVE SUMMARY

A VBA consolidated survey was conducted at the Los Angeles regional office from July 6-10, 1992. All elements of the regional office were reviewed during that period.

In general, the survey team found a hard working office that was struggling with an increased workload while having to endure disruptions caused by natural and civil disturbances. The Director has addressed these problems through positive steps such as focusing efforts on team building and interdivision communications.

Individual program summaries are as follows:

Compensation and Pension

The overall impression of the team was that division management was working very hard to keep from being completely overwhelmed by the workload. Although they appear to be losing the battle, installation of Migration Gateway, increased productivity of trainee adjudicators as they become more experienced, and management's attitude of not being willing to accept a deterioration of benefits delivery are going to help them to overcome their problems. Specific issues of concern include:

- ° Amendment of the WIPP user plan to include claims establishment procedures and WIPP list retention instructions.
- ° Reviewing appeal issues to ensure updating of the automated tracking system coding; cleaning up of all cases coded as certified for BVA review; and ensuring that specific reasons for a decision are provided in supplemental statements of the case.
- ° Returning exams as inadequate whenever there is an equivocal diagnosis or when the examiner defers giving a diagnosis pending review of psychological test results, x-rays, etc.

Education

The Education Liaison was found to be providing good service to veterans and their dependents, but needed to increase his liaison activity with schools and training establishments. The relatively small workload in Adjudication showed a need to stress quality improvements and training of personnel to keep them up to date on education processing procedures. Specific recommendations included:

- ° Ensuring that sufficient narrative is included in compliance reports to support observations and conclusions identified during the survey.
- ° Improve the station's quality review procedures to help identify error trends and training needs.
- ° Review and modify SAO procedures in both the liaison and claims processing areas.

Loan Guaranty

The survey team found a well run and effective Loan Guaranty Division. Quality and timeliness of benefits and services were excellent. The Division has strong leadership that strives to identify weaknesses and works to resolve its problems. Training is effective and overall morale is good. Recommendations were considered to be procedural in nature and included:

- Ensuring that copies of field reviews of negative work quality findings and documents relating to negative timeliness findings are placed on the appropriate appraiser's performance files as required. [REPEAT]
- Ensuring that Notices of Default and of Intention to Foreclose are processed within 10 calendar days after receipt by VA.
- Intensifying efforts to reduce Property Management inventory.
- Ensuring that claims on debt plus cost cases are not paid until notice of acceptable title is received from the District Counsel.

Veterans Services

The Veterans Services Division was found to be an excellently managed operation providing outstanding service to the veteran population. The only recommendation that was made was to strengthen supervisory controls for Privacy Act/Freedom of Information Act requests.

Vocational Rehabilitation

The survey team felt strongly that the VR&C Officer was on the way to making her division an excellent one, in spite of previous problems encountered in that operation. Serious problems in the delivery of employment services were noted and must be improved. However, the staff is competent and energetic and specific action plans to overcome problems have been developed. Specific recommendations included:

- Complying with due process requirements when disallowing or discontinuing cases.
- Providing work areas for the VRSs which offer auditory and visual privacy and gives the counselee a clear feeling of privacy and confidentiality.
- Improving the provision of Employment Services to increase the number of veterans rehabilitated.

Finance

For the most part, the Division was found to be running effectively and efficiently. The survey team recommended that more attention be given to details to ensure procedures are followed. The final survey report included 22 recommendations, three of which were repeats from the previous survey. Findings included:

- Maintaining documentation to show that reconciliation and verification of the subsidiary records with the CALM reports and Trial Balance is accomplished.

Finance, cont.

- ° Ensuring that the explanation on Journal Vouchers is adequate to determine why the entry is made.
- ° Ensuring station salary accruals do not exceed the limits established by manual directives. [REPEAT]
- ° Ensuring that aggressive follow-up is accomplished on both Loan Guaranty and CALM accounting accruals.
- ° Review and maintain chargebacks in accordance with Circular 20-84-25, Revised. [REPEAT]

Administrative Services

Division employees were found to be conscientious and working hard to provide support to other operating elements. Loan Guaranty files were maintained by the division and both the antiquated filing system and the separation of the files from the operating division proved problematic. Recommendations were generally procedural in nature and included:

- ° Publishing a local circular regarding Loan Guaranty files procedures.
- ° Ensuring that documents in all station pattern libraries are approved by the PCO and reviewed annually.
- ° Analysis of the amount of time spent processing and transcribing handwritten material.
- ° Establishing a local procedure to ensure that DOOR input is accurate.

Personnel

No major problems were found in the Personnel activity. Action items included:

- ° Involving immediate supervisors in deliberations on selections for positions they supervise.
- ° Meeting local labor relations obligations before formal meetings with employees.
- ° Establishing a Position Management Committee.

VAM&ROC
WICHITA, KS
SEPTEMBER 14-18, 1992

EXECUTIVE SUMMARY

A VBA consolidated survey was conducted at the VAM&ROC Wichita from September 14-18, 1992. Areas reviewed by team members were station management, compensation and pension, education, veterans' services, administrative services, personnel, budget and finance, loan guaranty, and vocational rehabilitation.

Station management is making a genuine effort to deal with the problems of making the one-station, one-VA concept work at Wichita. The May 1992 move of the regional office on to medical center grounds will assist this effort by removing the physical gap from the two functions. Division management, employees, union officials, and service officers continually commented that station management is fully supportive of them in the job they are doing and make every effort to meet their needs whenever possible.

As in the past, management philosophy at VAM&ROC Wichita seemed to be reactive rather than proactive. There has been little or no evidence of planning or preventive activity to deal with potential problems and cure them before they become crises. Station management seems to look to the Area office or Central Office Services to tell them what activities are important or necessary rather than making those decisions locally and defending their actions, if questioned.

Individual program summaries are as follows:

Management: Nine recommendations and one suggestion were made as a result of the review of station management. Findings include:

- Documenting files on action taken on recommendations resulting from divisions' reports, quarterly meetings, or SAOs;
- Updating the station's circulars; and
- Ensuring that the Assistant Director is involved in all briefings impacting on VBA operations at Wichita.

Compensation and Pension: Timeliness data shows that the Adjudication Division has made concerted efforts over the past year that have yielded impressive results. Eight recommendations and three suggestions were made. None are repeat recommendations. Findings include:

- Strengthening EVR processing; and
- Amending the WIPP User Plan.

Education: Everyone is working hard to provide quality and timely service to education claimants. However, there are still opportunities for improvement in both quality and timeliness. Three recommendations and two suggestions were made. Findings include:

- ° Ensure that reductions and terminations are processed in time to prevent the release of an erroneous payment; and
- ° Ensure that Chapter 31 eligibility determinations are processed within 5 workdays.

Loan Guaranty: The technical and clerical duties that the supervisors have had to assume make it difficult for them to perform all of their supervisory responsibilities and to ensure that program requirements are met, but efforts should be made to stress supervisory control and manual compliance in work processes and operating procedures. Twenty-three recommendations and two suggestions were made. There is one repeat recommendation and one partial repeat recommendation. Findings include:

- ° Utilizing spot checking of Systematic Quality Control cases as a management tool to determine areas for staff training;
- ° Reviewing defects noted by VACO and implementing corrective action to improve accuracy and compliance of end products cited as defects on noted SQC schedules;
- ° Reviewing causes for delays in processing and taking corrective action to improve the timeliness of end products cited as defects;
- ° Ensuring that the Chief of Loan Service and Claims performs required reviews of GI loans 6 or more months delinquent; and
- ° Reviewing and updating the Serious Default Action List and use it to monitor seriously delinquent loans.

Veterans Services: High quality service was provided in a timely manner. However, workload throughout the division was such that VBCs spent all their time providing immediate service. Supervisors moved more and more into direct labor, with less time to train staff or plan for the future. Four recommendations and one suggestion were made. Findings include:

- ° Identify and document all errors noted during quality control reviews in the areas of telephone interviews and field examination reports

Vocational Rehabilitation: The VR&C staff are competent providers of quality initial evaluations and rehabilitation services. Four recommendations were made. Findings include:

- ° Developing an action plan to improve the effectiveness of the DTAP initiative; and
- ° Developing an action plan to ensure that all staff members who have case management responsibilities verify and document actions to support determinations involving Target processing.

Personnel: The Personnel Service at this Center is providing appropriate service to the regional office. Two recommendations and three suggestions were made. Findings include:

- ° Purging employee folders of documents and other material that should be destroyed or filed in other appropriate locations in accordance with current guidelines.

Finance: More time and effort need to be placed in the area of reconciliations, both in CALM and Mortgage Loan Accounting. The report contains 30 recommendations in the finance activity. All recommendations are procedural in nature. Findings include:

- ° Identifying differences and taking prompt action to correct the out-of-balance condition on the CALM 860 Report, Accounting Reconciliation;
- ° Continuing to review and clear funds in suspense for an excessive period of time; and
- ° Ensuring that all required reconciliations are accomplished.

Administrative: Twelve recommendations and three suggestions were made. Findings include:

- ° Reviewing noted local circulars for necessary development, changes, or rescission;
- ° Establishing a schedule to ensure that vital records are timely microfilmed; and
- ° Ensuring that the Center disaster plan includes information regarding the removal of essential records, such as emergency plans, employee rosters, time and attendance records, delegations of authority, etc.

VA REGIONAL OFFICE
NEWARK, NJ
NOV. 30 - DEC. 4, 1992

EXECUTIVE SUMMARY

A VBA consolidated survey was conducted at the VARO Newark from November 30 - December 4, 1992. Areas reviewed by team members were station management, compensation and pension, education, administrative services, personnel, budget and finance, loan guaranty, and vocational rehabilitation. Although the Veterans Assistance Service did not participate in the on-site review, a summary of findings from their review of materials submitted by VARO Newark is included in the field survey report.

The area needing management attention at this regional office is the finance activity. The findings in this portion of the report are attributed to a lack of controls, training, and direct supervision. The review of mortgage loan accounting disclosed that a number of accounts had not been properly reconciled, accounts were being incorrectly charged, and formula proofs were out-of-balance. It is the opinion of the survey specialists that there is a definite need for an in-depth review of the fiscal operations, fiscal assistance, and employee training in all areas of fiscal operations, where necessary.

Individual program summaries are as follows:

Management: The conclusion in the management portion of the survey is that the Newark Regional Office is a very well run station which serves its clients well. No recommendations were made. The suggestion was made that greater vigilance be exercised during reviews of circulars, organization charts, etc. to insure accuracy.

Compensation and Pension: The Support Unit was formed to handle the initial processing of claims; the adjudicators have assumed many of the development functions; one letter generation system was replaced by another with a third system on the brink of implementation; and several TQM teams are studying other possibilities to improve claims processing. During the period of these changes, quality and timeliness have improved. Five recommendations and four suggestions were made. Findings include:

- ° Monitoring all exams requested via AMIE and tracking all problem cases encountered.
- ° Ensuring that proper dates and codes are annotated on rating decisions.

Education: Division quality and timeliness are both below required standards, although they are improving. Problems are concentrated in a few areas. Those problem areas should be susceptible to elimination in a

relatively short time. Seven recommendations and two suggestions were made. Findings include conducting intensive training on those topics identified by regional office and Education Service quality reviews as problem areas.

Loan Guaranty: A significant improvement has been made by the Loan Service and Claims section since the last survey. Servicing is now being done routinely and all of the new loans receive an interest cutoff date as soon as the loan is determined to be insoluble. Another positive change from the last survey is that Loan Processing was separated from Construction and Valuation and given a chief who is very experienced. There were 19 recommendations and 1 suggestion made in this activity. Findings include:

- ° Reviewing defects noted by VACO and implementing corrective action to improve accuracy and compliance of end products cited, and reviewing causes for delays in processing and taking corrective action to improve the timeliness of end products cited.
- ° Developing and implementing a procedure to reduce the backlog of loans pending guaranty.
- ° Reviewing causes for delay in processing and taking corrective action to improve the timeliness on offers that have been accepted for closing.

Veterans Assistance: Since the Veterans Assistance Service did not participate in the on-site review, no recommendations were made. However, deficiencies are noted in the areas of Privacy Act/FOIA requests, controls, and reporting based on VAS' review of materials submitted by VARO Newark. An on-site visit will be made to review the VSD late in the third quarter.

Vocational Rehabilitation: The VR&C Division has recently taken some major steps by beginning to respond to the DTAP initiative, establishing contracts for employment services, and negotiating contracts for educational/vocational counseling services. Closer attention needs to be given to the quality of VR&C casework, including especially, the initial evaluation and supervision activities. Ten recommendations and two suggestions were made. Findings include:

- ° Ensuring that entitlement decisions are fully and clearly documented.
- ° Developing an action plan to ensure that all staff members who have case management responsibilities verify and document actions to support determinations involving Target.

Personnel: The Personnel Division is operating in a most efficient and effective manner. The Personnel Officer has made positive changes since her appointment approximately 2 years ago. The division is solidly staffed, trained, and committed to the execution of all programs. The survey did not reveal any substantive discrepancies. Three recommendations and four suggestions were made in this program area.

Finance: As stated in paragraph two of this executive summary, the findings in this portion of the report are attributed to a lack of controls, training, and direct supervision. Thirty recommendations and two suggestions were made in the finance activity.

Administrative: The major cause for the findings in the administrative activity is the lack of the proper tools to perform effectively, in terms of training and direction. While employees are willing, in order for improvements to be made, division management direction will need to improve. Emphasis on SAO reviews, as a management tool and as a cross training tool, will assist in improving the operation. Nineteen recommendations and six suggestions were made. Findings include:

- ° Ensuring that Systematic Analysis of Operation reviews cover all required areas.

VARO
PHOENIX, AZ
JANUARY 25-29, 1993

EXECUTIVE SUMMARY

A VBA consolidated survey was conducted at the VARO Phoenix from January 25-29, 1993. Areas reviewed by team members were station management, compensation and pension, education, veterans' services, administrative services, personnel, budget and finance, loan guaranty, and vocational rehabilitation.

Noteworthy is the fact that a review of the areas of compensation and pension resulted in no recommendations to the station. A common characteristic the survey specialists noted among the managers in the Adjudication Division was their continual overview of the processes in anticipation of events that could affect the division's direction. Several management actions resulting from this "forecasting" or planning were the centralization of correspondence clerks and development clerks, centralization of the adjudicator trainees, the arrangement of the units, the rating board PC-program to control potential over 6-month cases, and the methods used for the authorization and rating board training.

Improvement is needed in the quality of service provided by the Administrative activity. The Chief, Administrative Division was hired during March 1992. Having had no previous experience with VA procedures, the chief was totally dependent upon his first level supervisors for the performance of Administrative Division activities. Through initiative, the chief took control of the tasks which are under the jurisdiction of the Administrative Division. Implementation of the recommendations and suggestions included in the report will enable the Administrative Division to provide quality service.

Individual program summaries are as follows:

Management: No recommendations were made in the area of station management. The Director's office keeps well-informed on all substantive issues and appears to have good rapport with division chiefs.

Compensation and Pension: As stated above, no recommendations were made in this area. Management's constant overview of workflow processes involves planning or forecasting.

Education: The Adjudication Division and the Education Services Unit of the Veterans Services Division have an excellent working relationship due to each division's open door policy that gives adjudicators and the Education Liaison Representative easy access to each other. The cooperative attitudes of the adjudicators and the ELR help ensure the continuation of this working relationship. No recommendations and two suggestions were made in this area.

Loan Guaranty: The Loan Guaranty Division has made progress in many areas since the last survey. Division management is doing a good job of identifying problems and areas of weakness in their Systematic Analyses of Operations and Internal Control Reviews. Many of the findings stated in the report had been recognized by division management prior to the survey, and Total Quality Management teams had been formed in many of the areas in an effort to resolve out-of-line situations. Fourteen recommendations were made. Two are repeat recommendations and one is a partial repeat. Findings include:

- Reviewing defects noted by VACO and implementing corrective action to improve accuracy and compliance of end products cited as defects on noted SQC schedules;
- Reviewing causes for delays in processing and taking corrective action to improve the timeliness of end products cited as defects; and
- Reviewing and updating the Serious Default Action List and use it to monitor seriously delinquent loans.

Veterans Services: In June 1992, the Veterans Assistance Section was moved to the first floor to provide better public access. The Field Section remained on the fourth floor, along with the Veterans Guidance Unit (VGU). This VBC/VCE project pilot, which was given VACO approval on October 22, 1992, used a case manager approach. The VGU opened the doors to the first clients on October 26, 1992, with one VBC and one VCE assigned full-time under the supervision of the VSO. Three recommendations and three suggestions were made. Findings include:

- Conducting another SAO of TIA timeliness and making any adjustments found necessary to reduce abandoned calls; and
- Tracking Privacy Act/FOIA correspondence from date received on station and providing interim responses as necessary.

Vocational Rehabilitation: The VR&C Division is one of the best in the nation. The staff is handling the increasing workload. Management of the division is excellent. The staff works as a team, and many of the creative approaches to service delivery are a result of total employee involvement in the work process. Noteworthy is the fact that the VR&C Officer has taken the initiative to contract out budget counseling for veterans in financial difficulty. Three recommendations and one suggestion were made. Findings include:

- Ensuring that contractors provide aptitude testing when necessary; and
- Developing contracts for employment services.

Personnel: In addition to servicing the Phoenix RO, the Personnel Division also provides full personnel support to the Reno RO. Interviews by the survey specialist with both regional office Directors resulted in a genuine expression of respect for the Personnel Officer and his staff. There was no doubt that the advice and guidance he and his staff provide are accepted as accurate and appropriate at both stations. Seven recommendations and four suggestions were made. Findings include:

- Updating the station's FLSA and EEO circulars to incorporate the recently promulgated change in definition of what hours constitute overtime hours under the Act (FLSA circular), and to incorporate the recently promulgated extension in the timeframe within which an employee must contact an EEO counselor after experiencing or becoming aware of an alleged discriminatory act from 30 days to 45 days (EEO circular); and
- Update/review/revise all Reno RO circulars to delete reference to the VAMC Personnel Service, and position descriptions to ensure conformance with accepted format and procedures.

Finance: The findings during the survey of the Finance Division indicate a well-run division. The report contains three recommendations, all of which are procedural in nature. Findings include:

- Ensuring that the year-end salary accruals do not exceed the limit established; and
- Ensuring that the Chargeback Control Report is reconciled and follow-up action is accomplished.

Administrative: As stated on page 1 of this summary, the management of this division has changed during the past year. Improvements in quality are needed. Ten recommendations and one suggestion were made. Findings include:

- Establishing and maintaining written controls for use of all mail room date stamp equipment; and
- Ensuring that records management hours are reported in DOOR.

Information Technology: A Wang VS system survey and assessment was conducted to provide insight into the current system configuration, system status, performance, and workload. The Office of Information Technology performed these reviews via remote logon to the regional office's system during the week of the survey. It is noteworthy that this site performs frequent disk initializations and has utilized special file placement techniques. Ten recommendations and eight suggestions were made, all very technical in nature.

VA REGIONAL OFFICE
MONTGOMERY, AL
JUNE 7-11, 1993

EXECUTIVE SUMMARY

A VBA consolidated survey was conducted at the VARO Montgomery from June 7-11, 1993. Areas reviewed by team members were station management, compensation and pension, education, veterans' services, administrative services (week of June 14), budget and finance, loan guaranty, vocational rehabilitation, and information technology. A review of personnel activities was not performed. However, as required under the revised process, a report was written based on a preliminary review of materials submitted by the station.

Currently, top station management is confronted with three major challenges. One challenge is maintaining acceptable quality and timeliness standards in rating and claims adjudication as the augmented complexity of these operations continue. Another challenge is managing the home loan guaranty workload resulting from DOD downsizing and low interest rates. Top station and division management are addressing these challenges with local initiatives.

The third challenge is the colocation project. The contract completion date for construction is May 1994. The demands and oversight responsibility placed on top management during this project are extensive. Upon completion, the complexity of owning and managing the facility will provide yet another challenge for top station management.

Individual program summaries are as follows:

Management: A suggestion was made that followup actions taken in response to SAO recommendations be annotated in the folder.

Compensation and Pension: The permanent transfer-in file is kept current using a calendar month suspense file with a cross-reference slip using the veteran's name. The systematic analyses and reports of the timeliness data and WIPP reviews clearly identify trends and areas of concern. The Training Quality Officer has a comprehensive technical background and should be able to provide guidance and assistance to the Administrative and Authorization Sections. The WIPP User Plan was very detailed and well thought-out. Claims processing timeliness did not deteriorate over the past year even though there was no Adjudication Officer. Ten recommendations and one suggestion were made. Findings include:

- Reviewing current division mail workflow and preparing written workflow charts and instructions; and
- Ensuring that division mail has end product control and audit trails before leaving the correspondence unit or being referred for folder pull.

Education: A written workflow guide for education processing, with a flow chart and instructions for handling various documents identified by form number, has been produced for use by Adjudication Division personnel. Four recommendations and one suggestion were made. Findings include:

- Conducting refresher training on processing certifications of attendance;
- Improving the execution of the WIPP User Plan; and
- Emphasizing check verification procedures.

Loan Guaranty: Of special significance is the division's outstanding relationship with program participants, fostered in part by the excellent public relation efforts of division management, which has aided in keeping VA competitive in the Alabama housing market. Quality and timeliness of benefits and services delivered to veterans is very good. Three recommendations were made. Findings include:

- Reviewing defects noted by VACO and implementing corrective action to improve accuracy and compliance of end products cited as defects on noted SQC schedules; and
- Ensuring that the staff field review requirement in the 15 percent category is accomplished within established timeframes.

Veterans Services: The division is currently in a period of transition with three recent supervisory changes. Although all have been long-time members of the division, they will require some time to adjust to their new roles and responsibilities. Division management and staff are motivated and concerned about the quality of service being provided. Many of the problems encountered in the survey are reflective of the difficulty of maintaining a high level of quality service during a period of declining resources. Five recommendations and three suggestions were made. Findings include:

- Obtaining equipment and assistance, as necessary, to provide additional privacy for personal interviews, and examining alternatives for reducing ambient noise levels in the Telephone Interview Activity;
- Ensuring that actions taken to secure delinquent accountings are adequately documented; and
- Making more effective use of the quality control review to identify areas of potential service weakness and incorporate areas identified in the division's training program.

Vocational Rehabilitation: The VR&C Officer is establishing a third outbased office in the VA Outpatient Clinic located in Huntsville. This will further enhance his efforts to serve disabled veterans from locations convenient to them, as well as facilitating coordination of services between VHA and VR&C, at the lowest cost possible to the taxpayers. The VR&C Officer has recruited,

selected, and mentored three chapter 31 participants to fill vocational rehabilitation specialist vacancies. Six recommendations and one suggestion were made. Findings include:

- ° Ensuring that entitlement narratives adequately reflect the unique facts of the veteran's situation and the reasoning which supports the decision;
- ° Improving the quality of services being provided to seriously disabled veterans; and
- ° Improving the quality of employment services which chapter 31 participants receive.

Human Resources Management: The paperwork review indicates a well run operation in Montgomery. The division is in compliance with the Office of Personnel Management's regulations and VA policies.

Finance: The Finance Section appears to be very well run. Personnel are conscientious and knowledgeable. The management style provided a very tight control on the operations. However, this tight control appeared to discourage open communication between the employees and management. The report contains nine recommendations and four suggestions. All but one of the recommendations are procedural in nature and not considered major. Six of the nine recommendations were accepted by division management and corrective action was implemented before the survey team left the station. The recommendation regarding the payment of chapter 31 vouchers, without adequate review by Finance, is considered to be a significant breach of internal control, and as such, needs to be addressed timely.

Administrative: The Administrative Section provides excellent service throughout the regional office. Six recommendations and one suggestion were made. Findings include:

- ° Publishing a local circular regarding records management which includes creation, maintenance, use, and disposal of records.

Office of Information Technology: The Office of Information Technology performed a review of the regional office's wang VS system via remote logon. The Montgomery Regional Office's operating system and utilities are well managed. Two recommendations and eight suggestions were made. All were very technical in nature.

Wilmington, DE Medical Center and Regional Office
Field Survey - September 20 - 24, 1993

Executive Summary

(September 28, 1993)

The Wilmington survey was the second survey conducted by this analyst under the revised survey procedures. All represented service/staffs performed their reviews and audits in a professional manner. Two service/staffs did not participate in the survey. Budget and Finance Staff did not participate due to an unexpected illness/hospitalization of the scheduled survey specialist. Veterans Assistance Service also did not participate. Both entities are planning on conducting survey visits in October, 1993, although the dates have not been scheduled as of this time. Both will be required to prepare a formal survey report, however, *neither* will be included in the official report prepared by this office. In addition to the typical complement of on-site survey personnel, this survey included a remote survey conducted by several 20M staff personnel. 20M did not conduct either a mid-week or exit briefing.

The Wilmington office is a generally well managed and operated office, staffed by personnel who are providing a very high level of quality service. There is a serious problem with timeliness, particularly in the areas of the Adjudication division (both C&P and Education claims), and the Vocational Rehabilitation and Counseling division. Additionally, the Human Resources Management Service has problems in management of all workload elements.

The office is in a situation where there are several new management personnel in the process of selection and assignment. {New director, assistant director, human resources management officer, finance officer, and adjudication unit chief, (chief of security, and chief of nurses)} This may have a positive impact on some of the long-standing problems found within the VBA activities.

Under the revised survey procedures, training on-site is considered an integral part of the overall survey process. Training was conducted by the Program Analysis and Evaluation Staff member for personnel from the Adjudication and Veterans Services divisions. Training consisted of a review of basic DOOR structure and accessibility, and training on OLQ. Additionally, assistance on development of several Q-files was provided. (There will be an ongoing follow-up on this issue.)

Education - will pursue consideration of moving all education cases to the RPO.
Voc Rehab - will pursue acquiring assistance from VACO to reduce workload.

At this writing, there are no known repeat findings.

There are no commendable findings from this survey.

The findings are as follows:

Compensation & Pension

(6)

Aggressive pursuit of avenues of assistance for the division to reduce/eliminate the low-tech workload items (BEVRs, drop file mail, FNODs, retirements, etc...). Aggressive pursuit of solutions to timeliness problems. Resolve delays in epc control timeliness; screening of new cases/mail; proper citations on admin error decisions; and, updating of letter glossaries.

Education

(4)

Emphasis on timely and thorough screening of incoming cases to prevent new, easy cases from becoming old, hard cases. Aggressive WIPP review plan. Improve SAO execution. Encourage SAAs to withdraw approvals of inactive educational institutions.

Veterans Assistance

(0) October 1993

Vocational Rehabilitation

(4)

Major effort to improve timeliness, particularly in chapter 31 time in applicant status. Reducing counseling psychologist workload. Improving rehab services case management. Improving effectiveness ratio, and monthly reviews of employment services cases.

Human Resources Management

(7)

Establishment of policies and procedures to: review Medical Center policies are reviewed annually, adverse and disciplinary actions contain appropriate EAP references, ensure Position Management Evaluations are done and done timely, ensure applicant supply file is maintained properly, ensure supervisory training is conducted, develop a position classification review plan, and, perform the required duties of an injury compensation specialist.

Budget & Finance

(0) October 1993

Administrative Support

(15)

Major items include: proper identification and routing of FOIA/PA mail, proper procedures and activity concerning the registry log (still being researched), conducting semi-annual review of division stocks, and use of RIMS program and code sheets.

Office of Information Technology

(9)

ISSO (Information Systems Security Officer) should update employee records and sensitive file records. Determination of which non-system files can be moved from S1 and V1 to other volumes. Other items relating to files maintenance, efficiency of application performance, and maintenance of backups.

Executive Summary

A consolidated field survey was conducted at VARO Salt Lake City, Utah, during the week of July 26 through 30, 1993. Education Service and the Personnel Assistance Staff did not participate in the on-site review but submitted write-ups for inclusion in the survey report.

Since the last survey of February - March 1991 there has been a large turnover of division chief and Director's office personnel. There are new Chiefs of Veterans Services, Vocational Rehabilitation, Adjudication as well as a new Management Analyst [formerly Assistant Director at Wichita] and a new personnel specialist. Personnel matters were previously handled in their entirety by the Personnel Officer at the local VAMC.

This station has been trying a variant of the VBC/VCE initiative. In this test, a VBC spends half time in Veterans Services Division and the other hours in Adjudication learning basic claims development. Station management claimed that the VBC was already applying his newly gained knowledge in his Veterans Assistance duties and passing it along to others. The VSO anticipates that the VBC will be functioning as a veterans case manager shortly by combining the skills learned in both areas.

Both C&P and Loan Guaranty found that the office is experiencing heavy workloads. Adjudication claims processing has been deteriorating for at least two years, particularly in those end products which require extensive rating board development. However, the station betters national and area averages in placing claims under control and is among the best in the nation in cases pending over 180 days old. Loan Guaranty noted that workloads are high in Construction and Valuation and Loan Processing but attributed the condition to continued low interest rates.

Here are a few action items cited by the programs/staff offices.

Compensation & Pension:

- Remind those doing initial development that all issues claimed must be fully developed.
- Involve the Military Records Specialist more when trying to secure service medical records.

Education:

- Place special emphasis on conducting compliance surveys so that the required surveys for the fiscal year can be completed.

Loan Guaranty:

- Review causes for delays in processing, and take corrective action.
- Ensure that loans are fully established (to include insurance coding) in the Portfolio Loan System within 17 calendar days after closing.

Veterans Assistance:

- Strengthen quality control review in the Fiduciary and Field Examination activity.

Vocational Rehabilitation:

- Staff members should review the Quality Review System.
- Establish a mechanism to provide for cash payment to veterans who request an advance from the Revolving Loan Fund.

Budget & Finance:

- Schedule invoices for payment in accordance with the Prompt Payment Act.

Office of Information Technology:

- Delete certain Wang-based files and libraries.
- Retain a maximum of three days of backup data for station Wang-based applications.

Chairman Slattery to Charles L. Cragin, Chairman, Board of
Veterans' Appeals, Department of Veterans Affairs

There are numerous unanswered questions of first impression concerning charging fees under 38 U.S.C. § 5904. As this statute is currently construed, an attorney or agent might be able to charge a fee for work involving some issues presented in a claim for veterans' benefits, but not others. In some instances, the separate issues may be clear. For example, if there is a final BVA decision only on the issue of service connection for a specific disease, such as multiple sclerosis, and the attorney or agent otherwise meets the requirements of 38 C.F.R. § 20.609(c), then the attorney or agent may charge a fee for work in connection with attempting to obtain service connection for multiple sclerosis, but not in connection with a claim for service connection for an entirely unrelated disability, such as a broken leg or emphysema.

In other instances, the separate issues might not be so clear. If an attorney or agent is able to charge a fee for services in connection with a claim for service connection for multiple sclerosis, may a fee also be charged for the ancillary issues of the percentage disability rating assigned and the effective date of the award, if the claim for service connection is successful? Similarly, because the United States Court of Veterans Appeals (the Court) has held that the analysis set forth in *Manio v. Derwinski*, 1 Vet App. 140 (1991), concerning reopened claims generally does not apply to claims for increased ratings for compensation or to claims for non-service connected pension benefits, under what circumstances, if any, would an attorney or agent be able to charge a fee for work before VA involving a subsequent claim for pension benefits, or for a higher disability rating? Also, if the Board's final decision concerned the assignment of a 100 percent disability rating under the rating schedule, it is not settled whether an attorney or agent may charge a fee for work involving a claim for a 100 percent rating on the basis of individual unemployability under 38 C.F.R. § 3.341.

There are also unanswered questions of first impression involving whether a final BVA decision exists, for the purpose of charging a fee under 38 U.S.C. § 5904, when the attorney or agent prevails in getting a prior BVA decision vacated--by a motion for reconsideration by the Board or by an order of a court, for example.

An attorney has also raised questions, which have not been ruled upon by the Court, about the validity of 38 C.F.R. § 20.609(c)(2), which requires that the notice of disagreement received on or after November 18, 1988, precede the final BVA decision after which a fee may be charged.

Simply allowing attorneys and agents to charge a fee for work performed after a certain date -- as was done for chapter 37 loans by Public Law No. 102-405 -- would eliminate most, if not all, of the questions that create uncertainty regarding the ability of an attorney or agent to charge a fee for work performed in a case and would greatly reduce the Department's burden of administering 38 U.S.C. § 5904(c).

In addition, simplifying the requirements for charging a fee would also simplify the review of fee agreements for authorization of payment under 38 U.S.C. § 5904(d). This should

ultimately have the effect of permitting a more streamlined authorization procedure, thereby allowing for faster payment to the attorney (or claimant, if the attorney is not entitled to a fee) and reducing the administrative burden on VA.

Arguably, being permitted to pay an attorney for representation on an initial claim would not always be an "unnecessary expense" for a claimant, if the attorney were successful, and an appeal to the BVA or the Court were thereby avoided. Rather, the cost of pursuing the claim - including the attorney's fee -- would likely be reduced by a successful outcome at the originating agency. A successful result at the agency of original jurisdiction, rather than on appeal to the BVA or a court, would usually result in a smaller award of past-due benefits, because the time between the date of the claim and the action granting the benefit would be shorter. This would have the effect of reducing a fee calculated as a percentage of the award of past-due benefits as, for example, when payment is made under 38 U.S.C. § 5904(d). Likewise, if the fee were calculated on an hourly basis, the fewer hours spent pursuing the claim and appeal, the smaller the fee. Therefore, if an attorney could obtain a successful outcome by being involved in the claim sooner, rather than later, the fee should also be reduced.

QUESTIONS SUBMITTED BY HONORABLE MICHAEL BILIRAKIS

1) In testimony delivered by Mr. Snyder of the National Organization of Veterans Advocates, the matter of medical members' appointments not being renewed was raised. His concerns are that these positions are being converted to in-house advisors. Please comment on this issue.

In the course of my confirmation hearing in February 1991, I stated that I questioned whether the particular expertise of BVA physicians would be more effectively utilized in the role of an evaluator and analyst, rather than as an adjudicator. I indicated that I would examine the issue in depth, if I were confirmed and appointed Chairman.

Shortly thereafter, in March 1991, the Court issued its landmark decision in *Colvin v. Derwinski*, 1 Vet.App. 171 (1991). In that decision, the Court held that the Board must consider only independent medical evidence to support its findings and could not rely on its own medical judgment. Since that time, under the applicable case law, the traditional use by VA of physicians as adjudicators, deciding cases on the basis of their own medical expertise, is impermissible. Hence, the Board can no longer base its decisions on its own medical expertise, including that of a physician serving as a Board member, but must rely upon medical evidence

on the record in support of the determination reached. This requires that Board members provide a thorough explanation of all medical principles relied on, with discussion of and citation to independent authority, such as medical treatises, texts, journals, and epidemiological studies. In addition, the Board increasingly has been required to obtain additional medical information and/or expert opinion on the record from sources within and outside the Department.

As a result, BVA is required to use its physician staff in capacities other than that of an adjudicator, such as providing advice, research, training, and internal quality review. To provide the maximum flexibility, and in anticipation of *Colvin* and its progeny, 3-year terms of office were recommended for each of the physician Board members appointed in the initial round of appointments in FY 1991. When these physicians' terms expire in July 1994, they will no longer be recommended for appointments to the Board. It is anticipated that, following the expiration of the physician Board members' terms, some, but not all, of these individuals may be appointed to other positions at the Board, depending on the need for their particular expertise, staffing levels, and other factors.

One of the effects of *Colvin*, is that the time spent by Board members and staff counsel performing research into the medical literature has greatly increased. The Board's Research Center has been expanded to help meet the Board's expanded research needs in this area. However, at times, a case is of such complexity as to warrant the need for referral for an expert medical opinion. To help meet this need, BVA physicians are increasingly utilized in the capacity of medical advisors to provide "expert medical opinion" from resources "available within the Department." 38 U.S.C. § 7109. As a practical matter, it is far less time consuming to obtain an advisory opinion from a BVA medical advisor than from other sources both within and outside the Department. The expert medical opinions provided by BVA medical advisors are entered "on the record" in appeals in which such guidance is required. Pursuant to my authority under 38 C.F.R. § 20.2, I have instituted procedures to provide the appellant and his or her representative with a copy of any medical opinion prepared by a BVA medical advisor, as well as a 60 day period in which to submit additional evidence and/or argument in response. These procedures track those in place under 38 C.F.R. § 20.903 for opinions obtained by the Board from independent medical experts, the Armed Forces Institute of Pathology, and VA General Counsel.

BVA staff medical advisors also provide ongoing training to the attorney staff and play a significant role in the Board's quality review process. Currently, the Board employs a total of seven physicians who are not appointed as members of the Board. One of these physicians serves solely as an acting Board member on a part time basis, following his recent voluntary resignation from the Board. The remaining six serve as the Board's staff medical advisors.

Finally, it should be noted that the Board also continues to seek advisory medical opinions from other VA sources, including the Under Secretary for Health, as well as from the Armed Forces Institute of Pathology and independent medical experts, who usually serve on the

faculties of leading medical schools. In FY 1993, the Board requested 180 opinions from independent medical experts under 38 U.S.C. § 7109.

2) Mr. Snyder has also indicated a reluctance on the part of the Board to revise its notices to appellants to incorporate certain suggestions which, in his opinion, would make it easier for the veteran to file an appeal to the Court. He cited VA's mailbox rule, the 120-day deadline for appeal to the Court, the lack of a fax number to which they can direct their appeal, etc. Can you tell us why you have refused to revise your notice to reflect these suggestions.

Mr. Snyder raised several suggestions for revision of VA Form 4597, Board of Veterans' Appeals Notice, in April 1993. This form is attached to each final BVA decision that is mailed to an appellant and representative. This form states that a Notice of Appeal must be filed with the Court within 120 days from the date of mailing of the notice of the BVA decision, language that is taken directly from 38 U.S.C. § 7266(a). It also indicates how to determine the date of mailing of the BVA decision, provides the address of the United States Court of Veterans Appeals, and informs the appellant that he or she may obtain information about the form of the Notice of Appeal, the methods by which the Notice of Appeal may be filed, the amount of the filing fee, and other matters covered by the Court's rules directly from the Court.

In his written statement for the subcommittee's hearing on November 17, 1993, Mr. Snyder asserts that this form is defective for four reasons: (1) it fails to inform veterans that their notice of appeal to the court must be in the hands of the Clerk of the Court before the end of the 120th day following the BVA decision; (2) it does not provide a fixed date by which the notice is to be filed; (3) it does not inform veterans that they can file their notice of appeal by telefacsimile; and (4) it does not inform veterans that the Clerk of the Court offers a list of persons admitted to practice before it. Your question concerns only the first and third "defects" identified by Mr. Snyder.

With the exception of the suggestion that BVA calculate the date upon which the notice of appeal must be filed with the Court, Mr. Snyder made all of these suggestions to me in April 1993. As I told him then, I believe that the Court is in a better position than the Board to provide potential appellants with specific information concerning appeals to the Court, or to assist them in obtaining representation by a member of the Court's bar. I also believe that it is unwise for the Board to include more specific information concerning the Court's rules and practices in VA forms for several reasons.

First, it must be stressed that the Court is part of the judicial branch of government and is separate, distinct, and independent of VA. It is up to the Court to articulate its Rules and practices and to interpret the law as it pertains to its jurisdiction, including the time limits and format for filing a Notice of Appeal with the Court. In order to provide accurate notice of the Court's Rules and practices, the Board would be required to update and revise its forms and procedures in order to insure that they are current with any changes in the Court's Rules and practices, whether or not they affect the Board itself. The Court has a standing Rules Advisory Committee and, from time to time, has made changes in its Rules. Furthermore, the Court has issued several decisions concerning the filing of Notices of Appeal. Either changes in the Rules or decisions of the Court interpreting the Rules could require revision in a form that contained details concerning the Court's Rules.

Second, even if the Board were promptly given information about any changes in the Court's practices and procedures, there would be a continuing danger that outdated information could be provided to appellants. This could occur during the period in which the form was in the process of revision to reflect such changes. Revision of a form can sometimes be a protracted process of many months before the new form is available. Outdated information could also be provided if an outdated form were inadvertently given to an appellant or referred to by an appellant. Conversely, if an appellant contacted the Clerk of the Court directly when he or she needed specific information about the Court's Rules, the Clerk's office could be expected to provide the most current information available.

Third, revision of forms to reflect changes in the Court's practices and procedures would consume scarce VA or BVA resources for revision and reprinting of the forms, and discarding of the obsolete form.

Also, when detailed and specific information is included in a form, the risk of unintentionally misleading by omission becomes greater. For example, Mr. Snyder asserts that the form should inform the appellant that he or she may file a Notice of Appeal with the Court by telefacsimile. He advocates including the telephone number to which appellants can direct their telefacsimile filings. However, he does not advocate including the information that, under the Court's Rule 3(a), a confirmatory written Notice of Appeal must be received by the Court within 10 days after the time fixed for facsimile filing. Failure to include this additional information could cause an appellant to believe erroneously that he or she had met all the requirements for filing an appeal when additional action is required to complete the filing. I believe that it is better to provide enough information to tell an appellant about his or her right to file a Notice of Appeal from a decision of the Board without attempting to provide the details of the Court's requirements for filing such appeals. We have intentionally limited the form notice mailed with the Board's decision to the front of one page. This is practical and economical. Including details about each of the items of information included in the current form would expand the form to several pages.

Mr. Snyder also advocates that the Board should calculate the deadline for filing a Notice of Appeal to the Court, and should stamp that deadline on the face of each decision of the Board. However, as he notes, "[c]alculating the deadline is no simple feat.... It requires familiarity with the Court's rules for calculating the counting period (i.e., whether to begin counting on the date of the BVA decision or the next day and what to do if the deadline falls on a particular holiday or weekend.)" Joint Statement of Veterans Due Process and National Organization of Veterans' Advocates presented to the Subcommittee on Compensation, Pension and Insurance, Committee on Veterans' Affairs, U.S. House of Representatives, November 17, 1993, at page 8. Currently, the final stages of dating, duplicating, and mailing a decision of the Board are performed by clerical personnel, not paralegals or attorneys.

If the Board were to adopt Mr. Snyder's suggestion -- or if legislation were passed that required the Board to institute the practice of calculating the deadline for filing the notice of appeal for every final decision of the Board -- then additional time would have to be taken in the final stages of the process, on the date that the decision was dated and mailed, for someone to calculate this deadline and stamp it on the Board's decision. If the task of calculating the deadline for filing an appeal is too difficult for the average appellant to perform correctly, then,

clearly, the persons selected to perform this task for the Board would have to be of a higher grade level than the clerks who are currently dating and mailing BVA decisions. Just as clearly, this additional step in the process of mailing a decision would slow the mailing process and add additional processing time to the Board's decisions. Although the additional time needed to calculate the deadline and stamp it on the decision would perhaps be only a few minutes per decision, the aggregate additional time for this step would be substantial. Moreover, although 100 percent accuracy would be desired, it is unrealistic to expect perfection in performing this task. The consequences of naming an erroneous deadline for filing an appeal would be undesirable. The additional administrative burdens on the Board would outweigh any possible beneficial result.



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